

No. 15120

United States
Court of Appeals
for the Ninth Circuit

UNITED STATES OF AMERICA,

Appellant,

vs.

THE UNITED STATES NATIONAL BANK OF
PORTLAND (OREGON), Executor of the
Estate of SAM J. WILSON, Deceased, and
JESSIE WILSON,

Appellees.

Transcript of Record

Appeal from the United States District Court for the
District of Oregon

FILED

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The United States District Court
for the District of Oregon

Civil No. 8011

THE UNITED STATES NATIONAL BANK OF
PORTLAND (OREGON), Executor of the
Estate of Sam J. Wilson, Deceased, and JESSIE
WILSON,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

COMPLAINT

1. This is an action for the recovery of individual income taxes for the year 1949 erroneously and illegally assessed against plaintiffs and collected by the District Director of Internal Revenue for the District of Oregon from plaintiff The United States National Bank of Portland (Oregon), as executor of the Estate of Sam J. Wilson, deceased. Jurisdiction of this action is based upon Section 1346(a)(1) of Title 28 of the United States Code, as amended.

2. During the year 1949 Samuel J. Wilson, also known as Sam J. Wilson, and plaintiff Jessie Wilson were husband and wife, residing in Washington County, Oregon. Sam J. Wilson died on October 7, 1950. On the 13th day of October, 1950, The United States National Bank of Portland (Oregon) was duly appointed by the County Court of Wash-

ington County, Oregon, as the sole executor of his estate, and it is still acting in that capacity. During the period from September 1, 1947, until October 30, 1952, Hugh H. Earle was the Collector of Internal Revenue for the District of Oregon and, since October 31, 1952, R. C. Granquist has been and now is the District Director of Internal Revenue for the District of Oregon.

3. During the months of April or May, 1943, Sam J. Wilson (hereinafter called "Wilson") entered into an oral agreement of joint venture with one Samuel A. Agnew (hereinafter called "Agnew") by the terms of which they mutually agreed that Wilson would search for and examine various timberlands, locate the same and determine their suitability for purchase for later resale at a profit. It was mutually agreed that Agnew would furnish the necessary funds for the purchase of such timberlands as were selected by Wilson. It was further understood and agreed between them that all of said timberlands were to be sold within a reasonable time and that any profit resulting therefrom on timberlands acquired from any state, county or political subdivision of any state at a tax sale were to be divided equally between Wilson and Agnew and that profits derived from the sale of timberlands acquired from private owners were to be divided on the basis of 80% thereof to Agnew and 20% to Wilson.

4. Thereafter, Wilson, pursuant to the terms of said agreement of joint venture, located certain

desirable timberlands which were thereafter purchased by him in the name of Agnew with funds supplied by Agnew.

5. On or about the 15th day of September, 1947, Agnew refused to recognize that Wilson had any right, title, interest or claim to such timberlands and attempted to repudiate the joint venture agreement hereinbefore described. Thereafter, and on or about the 23rd day of July, 1948, Wilson instituted a suit in the Superior Court of the State of California for the County of Del Norte, praying that the joint venture of Agnew and himself be established and that Wilson's interest in the timberlands be determined. The question was put at issue by appropriate pleadings of Agnew and Wilson, and on the 10th day of November, 1949, the case came on for trial before said court. After the trial had started, the controversy between Wilson and Agnew was fully compromised and settled under an agreement by which Agnew agreed to convey to Wilson certain tracts of the timberlands which had been so acquired. Wilson was also permitted to retain \$25,000.00 in cash which had been advanced previously by Agnew but not invested by Wilson in properties of the joint venture. Thereafter, Agnew, by appropriate conveyances, conveyed the legal title to said timberlands to Wilson.

6. Samuel J. Wilson and Jessie Wilson duly filed their joint income tax return for the year 1949 with the Collector of Internal Revenue for the District of Oregon.

7. Under date of July 14, 1954, the District Director of Internal Revenue for the District of Oregon notified plaintiffs of a deficiency asserted against Sam J. Wilson and Jessie Wilson for the year 1949 in the amount of \$361,852.06 and an over-assessment for the year 1950 in the amount of \$16,789.84. The principal basis of these adjustments was the wrongful assertion that 70% of the value of the timberlands conveyed to Wilson by Agnew (the remaining 30% being received by the attorneys for Wilson in said proceedings) was not a nontaxable dissolution of a joint venture, but constituted the receipt by Wilson of compensation in the amount of \$502,176.85, plus the \$25,000.00 received by Wilson in cash, for the performance of personal services.

In the said notice of deficiency dated July 14, 1954, the Commissioner of Internal Revenue also erroneously valued the timberlands in Humboldt County, California, at \$6.50 per M rather than \$2.50 per M, and erroneously valued the timberlands in Curry County, Oregon, at \$8.00 per M rather than \$4.00 per M.

In the said notice of deficiency the Commissioner also erroneously failed to find that the personal services performed by Sam J. Wilson covered a period of thirty-six calendar months, or more, and that the maximum income tax on the alleged compensation received therefor was governed by the provisions of Section 107(a) of the 1939 Internal Revenue Code.

8. On August 27, 1954, plaintiff The United States National Bank of Portland (Oregon), executor of the Estate of Sam J. Wilson, Deceased, paid to the District Director of Internal Revenue for the District of Oregon the sum of \$437,783.53, representing the deficiency of \$361,852.06 plus interest thereon in the amount of \$96,188.20, less the over-assessment for the year 1950 in the amount of \$16,789.84 and interest thereon in the amount of \$3,466.89. Thereafter, and on or about September 8, 1954, plaintiffs duly filed with the District Director of Internal Revenue their claim for refund in the amount of \$437,783.53, upon the grounds that the timberlands received by Wilson in the dissolution of said joint venture did not constitute compensation for his services; that the values attributed to the timberlands by the Commissioner of Internal Revenue were excessive; and that the Commissioner erred in failing to apply the provisions of Section 107(a) of the 1939 Internal Revenue Code.

9. Under date of January 5, 1955, plaintiffs received a statutory notice of the disallowance of said refund claim, in accordance with the provisions of Section 6532(a)(1) of the Internal Revenue Code of 1954.

10. The conveyance to Sam J. Wilson in 1949 of the legal title to the said timberlands constituted the nontaxable dissolution of a joint venture, rather than compensation for his personal services.

In the alternative, plaintiffs allege that the fair market value of the Humboldt County timber did

not exceed \$2.50 per M and the value of the Curry County Timber did not exceed \$4.00 per M.

In the further alternative, plaintiffs allege that the personal services performed by Sam J. Wilson covered a period of thirty-six calendar months, or more, and that the maximum income tax on the alleged compensation received therefor was governed by the provisions of Section 107(a) of the 1939 Internal Revenue Code.

Wherefore, plaintiffs pray for judgment against defendant as follows:

1. For the sum of \$437,783.53, together with interest thereon from August 27, 1954, and for their allowable costs and disbursements incurred therein;

2. If the Court should, for any reason, determine that 70% of the fair market value of said timberlands constituted compensation to Wilson for his personal services, then plaintiffs pray for judgment against defendant for the sum of \$271,376.45, together with interest thereon from August 27, 1954, and for their allowable costs and disbursements incurred therein; and

3. If the Court should, for any reason, determine that 70% of the fair market value of said timberlands constituted compensation to Wilson for his personal services, but that such services were performed over a period of thirty-six months or more, then, in the further alternative, plaintiffs pray for judgment against defendant for the sum of \$317,501.89, together with interest thereon from

August 27, 1954, and for their allowable costs and disbursements incurred therein.

/s/ C. E. WHEELOCK, C.P.D.

/s/ CARL E. DAVIDSON,

/s/ CHARLES P. DUFFY,
Attorneys for Plaintiffs.

[Endorsed]: Filed March 28, 1955.

[Title of District Court and Cause.]

ANSWER

I.

The allegations of paragraph number 1 of the complaint are admitted, except that it is denied that any tax was erroneously or illegally assessed against or collected from plaintiffs.

II.

The allegations of paragraph number 2 of the complaint are admitted.

III.

The allegations of paragraph number 3 of the complaint are denied.

IV.

The allegations of paragraph number 4 of the complaint are denied, except that it is admitted that Wilson located certain desirable timberlands which

Agnew thereafter purchased in his own name with his own funds.

V.

The allegations of paragraph number 5 of the complaint are denied, except that it is admitted that Wilson and Agnew filed suits in the Superior Court of the State of California for the County of Del Norte, seeking a determination of controversy which had arisen between them in connection with the discovery and purchase of said timberlands; and that it is further admitted that said controversy was compromised and settled on or about November 14, 1949, under an agreement by which Agnew agreed to convey to Wilson certain tracts of the timberlands which had been so acquired and that Wilson was also permitted to retain \$25,000 in cash which had been advanced previously by Agnew but not invested by Wilson in properties as intended at the time of the advancement. It is further admitted that thereafter Agnew, by appropriate conveyances, conveyed the legal title to said timberlands to Wilson.

VI.

The allegations of paragraph number 6 of the complaint are admitted, except that it is denied that said joint income tax return reported the true net income of Samuel J. Wilson and Jessie Wilson for the year 1949, or the correct amount of tax due thereon.

VII.

The allegations of the first subparagraph of paragraph number 7 of the complaint are denied, except

that it is admitted that under date of July 14, 1954, the Commissioner of Internal Revenue notified plaintiffs of a deficiency in income tax for the year 1949, asserted against Samuel J. Wilson and Jessie Wilson in the amount of \$361,852.06, and an overassessment for the year 1950 in the amount of \$16,789.84; and that it is further admitted that one basis for said adjustments was the determination by the Commissioner of Internal Revenue that part of the value of timberlands conveyed to Wilson by Agnew and the cash received by Wilson from Agnew constituted ordinary income to Wilson in the amounts of \$502,176.85 and \$25,000, respectively, for the year 1949.

VIII.

The allegations of the second subparagraph of paragraph number 7 of the complaint are denied, except that it is admitted that the Commissioner of Internal Revenue, in said notice of deficiency, valued timber in Humboldt County, California, at \$6.50 per M and the timber in Curry County, Oregon, at \$8.00 per M.

IX.

The allegations of the third subparagraph of paragraph number 7 of the complaint are denied, except that it is admitted that the Commissioner of Internal Revenue determined that the personal services performed by Samuel J. Wilson did not cover a period of thirty-six calendar months.

X.

The allegations of paragraph number 8 of the complaint are admitted, except that the allegations

and grounds stated in said claim for refund are denied.

XI.

The allegations of paragraph number 9 of the complaint are admitted.

XII.

The allegations of paragraph number 10 of the complaint and of each subparagraph thereof are denied.

Wherefore, defendant demands judgment that the complaint of the plaintiffs be denied and that it be awarded its costs herein.

C. E. LUCKEY,

United States Attorney,

Attorney for Defendant;

/s/ EDWARD J. GEORGEFF,

Assistant U. S. Attorney.

Affidavit of Service by Mail attached.

[Endorsed]: Filed May 26, 1955.

[Title of District Court and Cause.]

PRETRIAL ORDER

This cause having come on for a pretrial conference before the Honorable Chief Judge McColloch, at Portland, Oregon, on the 17th day of October, 1955, Plaintiffs appearing by C. E. Wheelock, Carl E. Davidson, and Charles P. Duffy, their attor-

neys, and Defendant appearing by C. E. Luckey, United States Attorney for the District of Oregon, Edward J. Georgeff, Assistant United States Attorney, and Allen A. Bowden and Walter B. Langley, Attorneys, Department of Justice.

It appears from the pleadings and pretrial proceedings that the parties, by their respective counsel, hereby stipulate that the following statements of fact may be taken as true and shall be received in evidence in this cause, subject to the right of any party to enter objections upon the grounds of immateriality and/or irrelevancy and subject to the further right of any party to introduce other and further evidence not inconsistent herewith. Exhibits which are incorporated herein and individually marked for identification as Plaintiffs' Exhibits 1-12 and Defendant's Exhibits A-R shall be received in evidence in this cause subject to the right of either party to enter objections thereto and the statements contained therein upon the grounds of immateriality and/or irrelevancy, and subject to the further right of any party to introduce other and further evidence not inconsistent herewith. The parties have waived all objections as to the authenticity of such exhibits and have agreed that copies of any exhibit may be introduced in lieu of the original thereof.

Statements of Fact

I.

This is an action for the recovery of individual income taxes for the year 1949 assessed against

Plaintiffs and collected by the District Director of Internal Revenue for the District of Oregon from Plaintiff, The United States National Bank of Portland (Oregon), as Executor of the Estate of Sam J. Wilson, Deceased. Jurisdiction of this action is based on Section 1346(a)(1) of Title 28 of the United States Code, as amended.

II.

During the year 1949, Samuel J. Wilson, also known as Sam J. Wilson, and hereafter referred to as Wilson, and Plaintiff Jessie Wilson, were husband and wife, residing in Washington County, Oregon. Wilson died on October 7, 1950. On the 13th day of October, 1950, The United States National Bank of Portland (Oregon) was duly appointed by the County Court of Washington County, Oregon, as the sole Executor of his estate, and it is still acting in that capacity. During the period from September 1, 1947, until October 30, 1952, Hugh H. Earle was the Collector of Internal Revenue for the District of Oregon, and since October 31, 1952, R. C. Granquist has been and now is the District Director of Internal Revenue for the District of Oregon.

III.

On September 17, 1947, one Samuel A. Agnew, hereinafter called Agnew, instituted suit as Plaintiff against Wilson in the Superior Court of the State of California for the County of Del Norte, Clerk's No. 3801 (Plaintiffs' Exhibit 1), alleging that Agnew employed Wilson to purchase certain

timberlands from the Gilbert-Thorpe Land Co., Inc., in Del Norte County, California, and, for that purpose advanced \$22,000.00 to Wilson; that Wilson did purchase said tract of timber and timberland, using the \$22,000.00 advanced by Agnew, and completed said purchase on or about May 24, 1946; and that title to said timber and timberland was taken in the name of Wilson. Agnew, in his complaint, prayed that Wilson be designated as a trustee for Agnew with relation to said property and that he be required to convey said property to Agnew. Wilson, for answer to said complaint, denied the employment by Agnew and the advancement of the \$22,000.00 to effect the purchase of said timber and timberland, and alleged that he purchased said timberland with his own funds and for his own account. Wilson, by counterclaim and by cross-complaint, attempted to allege the existence of a joint venture between Agnew and Wilson, upon which said counterclaim and cross-complaint issues were not joined, for procedural reasons.

IV.

On July 23, 1948, Wilson instituted suit as Plaintiff against Agnew, in the same Court, Clerk's No. 4060 (Plaintiffs' Exhibit 2), alleging that under an oral agreement of joint venture, made on or about May 15, 1943, under and by which Wilson would search for and examine timberlands suitable for purchase, such lands acceptable would be purchased, Agnew providing the funds necessary therefor; that lands so purchased were to be sold within

a reasonable time for profit; that the profits realized from such sales after deducting all sums advanced by Agnew with interest thereon at 5% per annum, were to be divided equally on tax title lands acquired from governmental sources, and the profits were to be divided 80% to Agnew and 20% to Wilson on lands acquired from private owners; and that on or about July 2, 1946, Agnew refused to recognize any such agreement and denied Wilson's rights in and to the timberlands. Wilson then prayed for the establishment of the joint venture and for a determination and ascertainment of his interests in and to the said timber and timberlands, for an accounting, and for a liquidation by sale or division in kind of the joint venture. To this complaint Agnew answered, denying the existence of a joint venture between Wilson and himself and alleged affirmatively that on or about the spring or summer of 1943, Agnew and Wilson entered into an oral agreement whereby Wilson would sell to Agnew and Agnew would purchase from Wilson certain timberlands in the States of California and Oregon; that pursuant to said agreement, Wilson offered to sell to Agnew certain timberlands then owned by Gilbert-Thorpe Land Co., Inc., (the same property referred to in Case No. 3801—Plaintiffs' Exhibit 1) and the Clutter tract in Curry County, Oregon; that Agnew accepted said offers and paid the purchase price therefor to Wilson; that contrary to said agreement, Wilson took title to these timberlands in his name. Agnew also alleged that pursuant to the oral agreement Agnew advanced and

paid to Wilson for the purchase of timberlands \$350,196.72 of which Wilson diverted to his own use the sum of \$86,217.39 and used \$33,806.00 thereof to acquire timberlands in his own name and refused to account to Agnew therefor. Agnew further alleged that he purchased and paid for a certain tract of tax title land in Curry County, Oregon, but that Wilson wrongfully took title thereto and refused to account for that property or the proceeds therefrom. Agnew prayed for the dismissal of Wilson's complaint and for affirmative relief with relation to each of his three separate counter claims. Wilson answered said cross-complaint, denying the allegations therein, except where consistent with his complaint.

Prior to the date set for trial, Agnew requested the Court, by motion, to determine first the issue as to whether or not a joint venture was entered into between the parties.

V.

On July 24, 1948, Agnew instituted a suit as Plaintiff against Wilson in the same Court, Clerk's No. 4061 (Plaintiffs' Exhibit 3), alleging that Wilson represented on or about October 15, 1945, that Wilson could acquire the capital stock of the Bay Hotel Co., Crescent City, California, for \$86,000.00; that prior to the acquisition of such stock Wilson and Agnew agreed that each party would advance \$43,000.00 toward the cost of such stock and that Wilson would sell the said stock within one year and return to Agnew \$43,000.00 and the parties would

share equally the difference between the purchase price and the selling price thereof; the stock thereafter was acquired by Wilson and on or about August 1, 1946, sold by Wilson, and that the selling price was \$150,000.00. Agnew prayed for the return of his advancement of \$43,000.00 and an accounting and for judgment for any further sums due Agnew. Wilson, by way of answer, denied the agreement between himself and Agnew as to the said hotel stock and further prayed that the suit be dismissed.

VI.

On August 28, 1947, Agnew commenced a suit as Plaintiff against Wilson and Double O Lumber Company, a corporation, O. Ramalia, and O. Bettis in the Circuit Court, Curry County, Oregon, alleging that Wilson was on March 29, 1946, Agnew's agent to purchase certain real property in Curry County, Oregon; and alleged the advancement of \$5,000.00 by Agnew to Wilson for the purchase of said property which Wilson purchased and took title in Wilson's name. Agnew further alleged the sale of said property by Wilson to the other Defendants and prayed for a trust in the property and further return of the \$5,000.00. On Wilson's petition, this case was removed to the United States District Court of Oregon (Civil No. 4251), and thereafter Agnew's motion to remand was denied. Issues were not joined and the case was dismissed with prejudice on March 13, 1950, based upon written stipulation of the parties.

VII.

Prior to the date of trial of the Del Norte County cases, a number of depositions on oral examinations were taken by each party.

VIII.

Subsequent thereto and on November 10, 1949, the said Del Norte County cases came on for trial before the Superior Court of California, for the County of Del Norte. Upon the stipulation of the parties, the three cases were consolidated for trial. By agreement of the parties, Wilson proceeded to the trial of his case for the establishment of the alleged joint venture and first called Agnew as an adverse witness (Plaintiffs' Exhibit 4). After one day of trial, the Court recessed until Monday, November 14, 1949, 10:00 a.m. During the recess of the trial of the said suits, Agnew and Wilson settled and adjusted their differences, as evidenced by a stipulation in writing (Plaintiffs' Exhibit 5), which provided that Wilson was to convey the Gilbert-Thorpe tract to Agnew and Agnew was to convey the Kepner and Clutter tracts to Wilson. Pursuant to said settlement, Wilson retained \$25,000.00 previously advanced by Agnew. Said stipulation also provided for the dismissal with prejudice of all litigation pending between the parties. Thereafter, the provisions of the stipulation were carried into effect by the execution and delivery of appropriate conveyances and mutual releases between Wilson and Agnew. Thereafter and on or about March 9, 1950, the cases were dismissed with prejudice.

IX.

The two tracts of timber and timberland conveyed by Agnew to Wilson in the settlement dated November 14, 1949, involved 1,440 acres in Humboldt County, California, and 1,600 acres in Curry County, Oregon.

Humboldt County Tract

This tract is located in Sections 8, 9, 17, 18, 19, 20 and 29 of Township 9 North, Range 3 East, Humboldt Base and Meridian. This tract was cruised in October and November of 1950, and the cruise (Plaintiffs' Exhibit 6) showed a total of merchantable timber thereon of 58,723 M of the following types and species:

Old Growth Fir	19,386 M
Merchantable Fir	38,612 M
#3 Fir	676 M
Cedar	35 M
Hemlock	14 M
Cedar Poles	5 pcs
Fir Poles	3,155 pcs

The cruise also showed that of the old growth fir, over 50% of the total was peelable. It further disclosed 40,844 M of fir culls.

Curry County Tract

This tract is located in Sections 12, 13, 14, 22, 26, 27, 28, 34, 35 and 36 of Township 36 South, Range 14 West, Willamette Base and Meridian. The tract was cruised in March and April of 1950;

and the cruise (Plaintiffs' Exhibit 7) showed the following quantities and species:

Yellow Fir	38,897 M
Red Fir	770 M
Port Orford Cedar	645 M
White Fir and Other	510 M
<hr/>	
Total	40,822 M

X.

By prior agreement between Wilson and his attorneys, C. E. H. Maloy and William W. Speer, Maloy was to receive 20% and Speer was to receive 10% of any timberlands, other property or money which Wilson might obtain in the said Wilson-Agnew litigation.

XI.

A portion of the Curry County lands was conveyed to William W. Speer on or about May 5, 1950, in full satisfaction of his claim for fees as to the Curry County property received by Wilson in the settlement with Agnew.

XII.

During May of 1950, C. E. H. Maloy by agreement in writing sold to Samuel J. Wilson and Jessie Wilson his 22% interest in the remaining Curry County property received by Wilson in the settlement with Agnew for a total consideration of \$25,000.00 payable as shown in the agreement which is marked Plaintiffs' Exhibit 8.

XIII.

On or about May of 1950, Capitol Timber Company, an Oregon corporation, was formed. The stock record book discloses the total stock issued by said corporation to be 200 shares on that date, of which 169 shares were issued to Wilson, 30 shares to F. J. Howser, and 1 share to C. E. Wheelock. Thereafter, Wilson and Jessie Wilson made a contract in writing (Defendant's Exhibit A) agreeing to sell to said Capitol Timber Company all the Curry County timber and timberlands received by Wilson in the settlement except that portion theretofore conveyed to William W. Speer; that the purchase price was equal to \$10 per M times the merchantable timber thereon payable at such rate as the timber was cut and removed thereafter by Capitol Timber Company.

XIV.

The Humboldt County timberlands were thereafter sold by the Estate of Sam J. Wilson in the course of probate administration on or about April 27, 1951, for \$620,000.00 as per order of the probate court confirming the sale, a certified copy of which is Defendant's Exhibit B. Thirty per cent (30%) of said sales price was paid to Maloy and Speer in accordance with their fee contract.

XV.

Wilson and Jessie Wilson duly filed their joint income tax return for the year 1949 with the Col-

lector of Internal Revenue for the District of Oregon (Defendant's Exhibit C).

XVI.

Under date of July 14, 1954, the Commissioner of Internal Revenue notified Plaintiffs of a deficiency asserted against Wilson and Jessie Wilson for the year 1949 in the amount of \$361,852.06, and an over-assessment for the year 1950 of \$16,789.84 (Defendant's Exhibit D). The principal basis for the deficiency for the year 1949 was the assertion that 70% of the fair market value of the timber and timberlands conveyed by Agnew, as referred to above, constituted the receipt by Wilson of compensation for services rendered, includable in the gross income for the year 1949 under Sec. 22(a) of the Internal Revenue Code of 1939, in the amount of \$502,176.85, plus \$25,000.00 received by Wilson in cash and not received as a non-taxable dissolution of a joint venture between Agnew and Wilson.

XVII.

In said notice of deficiency dated July 14, 1954, the Commissioner of Internal Revenue determined the fair market value of the timber and timberlands received by Wilson in Humboldt County, California, and Curry County, Oregon, to be \$717,-395.50 of which Wilson's share was 70% thereof, or \$502,176.85.

XVIII.

On August 27, 1954, Plaintiff, The United States National Bank of Portland (Oregon), Executor of

the Estate of Sam J. Wilson, Deceased, paid to the District Director of Internal Revenue for the District of Oregon the sum of \$437,783.53, representing the deficiency of \$361,852.06 plus interest thereon in the amount of \$96,188.20, less the overassessment for the year 1950 in the amount of \$16,789.84 and interest thereon in the amount of \$3,466.89. Thereafter, and on or about September 8, 1954, Plaintiffs duly filed with the District Director of Internal Revenue their claim for refund (Plaintiffs' Exhibit 9) in the amount of \$437,783.53, upon the grounds that the timberlands received by Wilson in the settlement dated November 14, 1949, represented the nontaxable dissolution of a joint venture and did not constitute compensation for his services; that the values attributed to the timberlands by the Commissioner of Internal Revenue were excessive; and that the Commissioner erred in failing to apply the provisions of Section 107(a) of the Internal Revenue Code of 1939.

XIX.

Under date of January 5, 1955, Plaintiffs received a statutory notice of the disallowance of said refund claim, in accordance with the provisions of Section 6532(a)(1) of the Internal Revenue Code of 1954 (Plaintiffs' Exhibit 10).

XX.

None of the timber or timberlands referred to in the pleadings as having been taken in the name of Agnew was sold or otherwise disposed of prior to

November 14, 1949. No partnership information returns were ever filed by Wilson and Agnew for the years 1943 through 1949, inclusive. Wilson and Agnew never entered into a formal written partnership agreement.

Plaintiffs' Contentions

I.

The nature of the proceeds from the settlement of the litigation between Wilson and Agnew, and the income tax consequences thereof, are determined by the grounds of the suits which were thereby settled. The agreement between Agnew and Wilson (Plaintiffs' Exhibit 5) therefore, constituted the nontaxable dissolution of a joint venture, and the fair market value of the proceeds thereof did not constitute compensation for his personal services.

Plaintiffs, therefore, are entitled to a refund in the sum of \$437,783.53, together with interest as provided by law.

II.

If the Court should, for any reason, determine that 70% of the fair market value of said timberlands constituted compensation to Wilson for his personal services, then, in the alternative, Plaintiffs contend that the fair market value of the Humboldt County timber did not exceed \$2.50 per M and the value of the Curry County timber did not exceed \$4.00 per M.

In that event, Plaintiffs would be entitled to a refund in the amount of \$271,376.45, together with interest as provided by law.

III.

If the Court should, for any reason, determine that 70% of the fair market value of said timberlands constituted compensation to Wilson for his personal services and that such services were performed over a period of thirty-six months or more, to wit: commencing on or about February 15, 1943 (Paragraph 3 of the complaint herein being hereby amended accordingly) and continuing at least through July 2, 1946 (Plaintiffs' Exhibit 10), then in the further alternative, Plaintiffs contend that the maximum income tax on the alleged compensation received therefor was governed by the provisions of Section 107(a) of the 1939 Internal Revenue Code.

In that event, Plaintiffs would be entitled to a refund in the amount of \$317,501.89, together with interest as provided by law.

Defendant's Contentions

I.

That the properties received by Wilson in settlement of the Agnew-Wilson litigation in 1949 constituted payment for services rendered by Wilson to Agnew and taxable as ordinary income for the year 1949 under Sec. 22(a) of the Internal Revenue

Code of 1939; that no joint venture ever existed between Agnew and Wilson.

II.

Alternatively, that if a joint venture did exist, the properties received in the settlement of the Agnew-Wilson litigation in 1949 by Wilson constituted Wilson's share of the profits of the joint venture and taxable as ordinary income under Sec. 22(a) of the Internal Revenue Code of 1939.

III.

Further, if a joint venture did exist, then the settlement of the Agnew-Wilson litigation in 1949 constituted the acquisition of an interest in the assets of the joint venture, which acquisition or transfer resulted in gain to Wilson and is taxable as ordinary income under Sec. 22(a) of the Internal Revenue Code of 1939.

IV.

The fair market values per M of the timberlands received in the settlement of the Agnew-Wilson litigation in 1949 by Wilson were \$6.50 per M in Humboldt County and \$8.00 per M in Curry County.

V.

The properties received in the settlement of the Agnew-Wilson litigation in 1949 were received by Wilson as compensation for services rendered over less than a period of 36 months, and Sec. 107(a) of the Internal Revenue Code of 1939 is therefore inapplicable.

Issues to Be Determined

Plaintiffs contend that the issue is as follows:

I.

Whether what Wilson received by reason of the litigation with Agnew and the written settlement agreement between them constituted compensation for his personal services, as contended by Defendant, or proceeds from the dissolution of a joint venture and, therefore, nontaxable, as contended by Plaintiffs.

Defendant contends that the issues are as follows:

I.

Whether a joint venture between Agnew and Wilson existed during the years 1943 through 1946, inclusive.

II.

If no joint venture existed between Agnew and Wilson between the years 1943 and 1946, inclusive, did the receipt of the property constitute compensation for services rendered by Wilson.

III.

If a joint venture existed between Agnew and Wilson, did the receipt of the property constitute a distribution of the profits of the joint venture to Wilson.

IV.

If a joint venture existed between Agnew and Wilson, did the settlement agreement transfer an interest in the assets of the joint venture to Wilson.

Agreed Issues

I.

If the Court decides that the fair market value of the properties received by Wilson in the settlement of the Agnew-Wilson litigation constituted compensation for his personal services rendered by him or otherwise ordinary income to him under Section 22(a) of the Internal Revenue Code of 1939, then the Court is to determine the fair market value in November, 1949, of the timber and timberlands in Humboldt and Curry Counties.

II.

If the Court decides that the fair market value of the properties received by Wilson in the settlement of the Agnew-Wilson litigation constituted compensation for his personal services rendered by him or otherwise ordinary income to him under Section 22(a) of the Internal Revenue Code of 1939, then the Court is to determine over what period of time the services were performed, and therefore, whether Section 107(a), Internal Revenue Code of 1939, is applicable.

Exhibits

The following exhibits were marked for identification at the pretrial conference:

Plaintiffs' Exhibits

Plaintiffs' Exhibit 1: Pleadings in the case of Samuel A. Agnew v. Samuel J. Wilson, No. 3801,

in the Superior Court of the State of California for Del Norte County.

Plaintiffs' Exhibit 2: Pleadings in the case of Samuel J. Wilson v. Samuel A. Agnew, No. 4060, in the Superior Court of the State of California for Del Norte County.

Plaintiffs' Exhibit 3: Pleadings in the case of Samuel A. Agnew vs. Samuel J. Wilson and Eva Wilson, No. 4061, in the Superior Court of the State of California for Del Norte County.

Plaintiffs' Exhibit 4: Transcript of testimony at consolidated trial of the above cases.

Plaintiffs' Exhibit 5: Stipulation for settlement of the above cases.

Plaintiffs' Exhibit 6: Cruises on Humboldt County timber.

Plaintiffs' Exhibit 7: Cruises on Curry County timber.

Plaintiffs' Exhibit 8: Agreement of May, 1950, between C. E. H. Maloy, et ux., and Samuel J. Wilson, et ux.

Plaintiffs' Exhibit 9: Deposition of Samuel A. Agnew taken in the instant case.

Plaintiffs' Exhibit 10: Summary of checks and certain checks of S. A. Agnew.

Plaintiffs' Exhibit 11: Refund claim for plaintiffs for the year 1949.

Plaintiffs' Exhibit 12: Statutory notice of disallowance of Plaintiffs' refund claim.

Defendant's Exhibits

Defendant's Exhibit A: Contract of sale dated May, 1950, between Wilson and wife, and Capitol Timber Company.

Defendant's Exhibit B: Order confirming sale of real estate on bid in open court by Superior Court, Del Norte County, California.

Defendant's Exhibit C: Joint individual income tax return, Form 1040, filed by Sam J. Wilson and Jessie Wilson for the calendar year 1949.

Defendant's Exhibit D: Deficiency notice dated July 14, 1954, with statement attached.

Defendant's Exhibit E: Individual income tax return, Form 1040, filed by Sam J. Wilson for the calendar year 1945.

Defendant's Exhibit F: Individual income tax return, Form 1040, filed by Sam J. Wilson for the calendar year 1946.

Defendant's Exhibit G: Individual income tax return, Form 1040, filed by Sam J. Wilson for the calendar year 1947.

Defendant's Exhibit H: Individual income tax return, Form 1040, filed by Sam J. Wilson, for the calendar year 1948.

Defendant's Exhibit I: Joint individual income tax return, Form 1040, filed by Jessie Wilson and Sam J. Wilson, Deceased, for the calendar year 1950.

Defendant's Exhibit J: Amended joint individual income tax return, Form 1040, filed by Jessie

Wilson and Sam J. Wilson, Deceased, for the calendar year 1950.

Defendant's Exhibit K: Second amended joint individual income tax return, Form 1040, filed by Jessie Wilson and Sam J. Wilson, Deceased, for the calendar year 1950.

Defendant's Exhibit L: Application to purchase signed by Wilson for Agnew.

Defendant's Exhibit M: Statement of monies paid to Wilson.

Defendant's Exhibit N: Deposition of Wilson in Del Norte County cases.

Defendant's Exhibit O: Certified copies of certain drafts.

Defendant's Exhibit P:

- (1) Letter from Wilson to Agnew 1-22-44.
- (2) Letter from D. K. to Wilson 2-3-44.
- (3) Letter from Agnew to Wilson 2-11-44.
- (4) Letter from Wilson to Barkus 2-15-44.
- (5) Letter from Wilson to Agnew 7-30-44.
- (6) Letter from Wilson to Agnew 7-30-44.
- (7) Letter from Wilson to Agnew 10-24-44.
- (8) Letter from Wilson to Agnew 11-3-44.
- (9) Letter from Wilson to Agnew 11-7-44.
- (10) Letter from Wilson to Agnew 1-4-45.
- (11) Letter from Wilson to Agnew 1-4-45.
- (12) Telegram from Wilson to Agnew 1-16-45.
- (13) Letter from Wilson to Agnew 3-6-45.
- (14) Telegrams from Wilson to Agnew
3-14-45.
- (15) Telegrams from Wilson to Agnew
3-28-45.

- (16) Letter from Wilson to Agnew 3-27-45.
- (17) Letter from Wilson to Agnew 3-27-45.
- (18) Letter from McCutcheon, et al., to
Wilson 7-5-45.
- (19) Letter from Wilson to Agnew 7-26-45.
- (20) Letter from Wilson to Agnew 8-7-45.
- (21) Letter from Wilson to Agnew 8-11-45.
- (22) Letter from Wilson to Agnew 8-24-45.
- (23) Letter from Wilson to Agnew 8-24-45.
- (24) Telegram from Agnew to Wilson
12-22-45.
- (25) Letter from Wilson to Agnew 2-11-46.
- (26) Letter from Wilson to Agnew 6-19-46.
- (27) Letter from Wilson to Agnew 5-31-46.
- (28) Letter from Wilson to Agnew 7-3-46.
- (29) Letter from Wilson to Agnew 7-12-46.
- (30) Letter from Wilson to Agnew 7-28-46.
- (31) Letter from Wilson to Agnew 11-30-46.
- (32) Letter from California Veneer to Wil-
son 12-11-46.
- (33) Letter from Wilson to Agnew 3-6-47.
- (34) Letter from Wilson to Agnew 4-5-47.
- (35) Letter from Agnew to Wilson 4-10-47.
- (36) Letter from Wilson to Agnew 4-16-47.
- (37) Letter from Wilson to Agnew 6-21-47.
- (38) Letter from Agnew to Wilson 7-9-47.
- (39) Letter from Agnew to Wilson 12-17-47.
- (40) Letter from Wilson to Agnew 12-3-47.
- (41) Letter from Wilson to Cunningham
2-16-50.

Defendant's Exhibit Q: Contract to purchase
tax title property, Curry County, Oregon.

Defendant's Exhibit R: Estate Tax Return, Estate of Sam J. Wilson, Deceased.

It is agreed between the parties that if the Court should find that Plaintiffs are entitled to any recovery from Defendant that the amount of the judgment will be agreed upon between the parties and submitted to the Court. In the event of disagreement between the parties, the conflicting computations will be submitted to the Court for determination.

It is agreed by the parties that this pretrial order will govern the course of the trial and will not be amended, except by consent or to prevent manifest injustice.

The Court finding that the foregoing clearly and accurately reflects the pretrial conference had herein and the stipulations and agreements of the parties, and amendments to the pleadings, hereby ratifies and confirms the foregoing proceedings in all things and does hereby

Order that the said pretrial order be and the same is hereby incorporated into and hereby made a part of the record in this case for the purpose of controlling the course of proceedings on the formal trial hereof before the Court.

Dated this 25th day of October, 1955.

/s/ CLAUDE McCOLLOCH,
District Judge.

Approved:

/s/ C. E. WHEELOCK,

Of Attorneys for Plaintiffs;

/s/ EDWARD J. GEORGEFF,

Of Attorneys for Defendant.

[Endorsed]: Filed October 25, 1955.

[Title of District Court and Cause.]

MEMORANDUM OF DECISION

Even though there be doubt whether the authorities relied on by plaintiffs re settlement after litigation, apply to the facts here presented, I have no hesitation in finding on the record made, that Wilson and Agnew were engaged in a joint venture¹, and that this was dissolved by the settlement agreement of November 14, 1949.

I find that Wilson's business relations with Agnew began in January, 1943, and continued until June, 1946.

Dated: November 29, 1955.

/s/ CLAUDE McCOLLOCH,

Judge.

[Endorsed]: Filed November 29, 1955.

¹Joint ventures of the sort engaged in by Wilson and Agnew, for the discovery, development and sale of natural resources (minerals, timber, water power, etc.) have been familiar practice in the Western States.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause having come on regularly for trial without a jury before the Honorable Claude McCulloch, Chief Judge of the above-entitled Court at Portland, Oregon, on the 25th and 26th days of October, 1955, plaintiffs appearing by C. E. Wheelock, Carl E. Davidson and Charles P. Duffy, their attorneys, and defendant appearing by C. E. Luckey, United States Attorney for the District of Oregon and Allen A. Bowden, Attorney, Department of Justice, Washington, D. C., and the parties having produced testimony and evidence in behalf of their respective contentions as reflected by the pretrial order previously made and entered herein; and

The Court having thereafter considered fully all matters of fact and law presented by the parties and being at this time fully advised, does make the following:

Findings of Fact

I.

Plaintiffs instituted this action to recover individual income taxes assessed against plaintiffs by the Commissioner of Internal Revenue of the United States and collected from plaintiff, The United States National Bank of Portland (Ore-

gon) as executor of the Estate of Sam J. Wilson, Deceased, by the District Director of Internal Revenue for the District of Oregon. Jurisdiction of this action exists by virtue of Section 1346(a)(1) of Title 28, United States Code.

II.

During the year 1949, Samuel J. Wilson, also known as Sam J. Wilson, and plaintiff Jessie Wilson were husband and wife, residing in Washington County, Oregon. Sam J. Wilson died on October 7, 1950. On the 13th day of October, 1950, The United States National Bank of Portland (Oregon) was duly appointed by the County Court of Washington County, Oregon, as the sole executor of his estate, and it is still acting in that capacity. During the period from September 1, 1947, until October 30, 1952, Hugh H. Earle was the Collector of Internal Revenue for the District of Oregon, and since October 31, 1952, R. C. Granquist has been and now is the District Director of Internal Revenue for the District of Oregon.

III.

In January, 1943, Samuel J. Wilson (hereinafter called "Wilson") entered into an oral agreement of joint venture with one Samuel A. Agnew (hereinafter called "Agnew"), by the terms of which they mutually agreed that Wilson would search for and examine various timberlands, locate the same and determine their suitability for purchase for later resale at a profit. It was mutually agreed that Agnew would furnish the necessary funds for the

purchase of such timberlands as were selected by Wilson. It was further understood and agreed between them that all of said timberlands were to be sold within a reasonable time and that any profit resulting therefrom on timberlands acquired from any state, county or political subdivision of any state at a tax sale were to be divided equally between Wilson and Agnew and that profits derived from the sale of timberlands acquired from private owners were to be divided on the basis of 80% thereof to Agnew and 20% to Wilson.

IV.

Commencing in January, 1943, and continuing until June, 1946, Wilson, pursuant to the terms of said agreement of joint venture, performed the agreed personal services for the joint venture and located certain desirable timberlands which were thereafter purchased by him in the name of Agnew with funds supplied by Agnew. None of said timberlands was sold or otherwise disposed of during the existence of the said joint venture between Wilson and Agnew.

V.

On or about the 2nd day of July, 1946, Agnew refused to recognize that Wilson had any right, title, interest or claim to such timberlands and attempted to repudiate the joint venture agreement hereinbefore described. Thereafter, and on the 23rd day of July, 1948, Wilson instituted a suit against Agnew in the Superior Court of the State of Cali-

for the County of Del Norte, praying that the joint venture of Agnew and himself be established; that Wilson's interest in the timberlands be determined; and that said interest be liquidated and sold or that the timberlands be divided in kind between Agnew and Wilson. The question was put at issue by appropriate pleadings of Agnew and Wilson. Agnew requested the Court, by motion, to determine first the issue as to whether a joint venture was entered into between the parties. On the 10th day of November, 1949, the case came on for trial before said Court, together with two related cases which were consolidated pursuant to a stipulation of the parties. Wilson proceeded to the trial of his case for the establishment of a joint venture. After one day of trial Agnew and Wilson settled and adjusted their differences, as evidenced by a written stipulation between them. The settlement agreement provided, in part, that Agnew was to convey to Wilson a tract of timber located in Humboldt County, California, and a tract of timber located in Curry County, Oregon. Pursuant to said settlement, Wilson also retained \$25,000.00 previously advanced by Agnew. The stipulation further provided for the dismissal with prejudice of all litigation pending between the parties. Thereafter, the provisions of the settlement agreement were carried into effect by the execution and delivery of appropriate conveyances and mutual releases between Wilson and Agnew, and on or about March 9, 1950, the cases were dismissed with prejudice.

VI.

Wilson and his wife, Jessie Wilson, duly filed their joint income tax return for the year 1949 with the Collector of Internal Revenue for the District of Oregon. In such return the dissolution of the joint venture with Agnew was duly reported as a nontaxable dissolution of a joint venture, except for the cash received by Wilson.

VII.

Under date of July 14, 1954, the Commissioner of Internal Revenue notified plaintiffs of a deficiency asserted against them for the year 1949 in the amount of \$361,852.06 and an overassessment for the year 1950 of \$16,789.84. The basis for the deficiency for the year 1949 was the assertion that 70% of the fair market value of the timberlands conveyed to Wilson by Agnew (the remaining 30% being received by the attorneys for Wilson in said proceedings) constituted the receipt by Wilson of compensation for services rendered rather than the receipt of property in dissolution of the joint venture between Agnew and Wilson.

VIII.

On August 27, 1954, plaintiff, The United States National Bank of Portland (Oregon), Executor of the Estate of Sam J. Wilson, Deceased, paid to the District Director of Internal Revenue for the District of Oregon the sum of \$437,783.53, representing the deficiency of \$361,852.06 plus interest thereon in the amount of \$96,188.20, less the overassessment

for the year 1950 in the amount of \$16,789.84 and interest thereon in the amount of \$3,466.89. Thereafter, and on or about September 8, 1954, plaintiffs duly filed with the District Director of Internal Revenue their claim for refund in the amount of \$437,783.53, upon the grounds that the timberlands received by Wilson in the settlement dated November 14, 1949, represented the nontaxable dissolution of a joint venture and did not constitute compensation for his services; that the values attributed to the timberlands by the Commissioner of Internal Revenue were excessive; and that the Commissioner erred in failing to apply the provisions of Section 107(a) of the Internal Revenue Code of 1939.

IX.

Under date of January 5, 1955, plaintiffs received a statutory notice of the disallowance of said refund claim, in accordance with the provisions of Section 6532(a)(1) of the Internal Revenue Code of 1954.

X.

The agreement between Agnew and Wilson of November 14, 1949, effected the dissolution of the joint venture theretofore existing between them. The conveyance of the timberlands to Wilson did not constitute a distribution of profits or anticipated profits of the joint venture.

From the foregoing findings of fact, the Court draws the following:

Conclusions of Law

I.

The agreement between Agnew and Wilson of November 14, 1949, constituted the nontaxable dissolution of a joint venture and the fair market value of the proceeds thereof did not constitute compensation for Wilson's personal services. The conveyance of the timberlands to Wilson was a part of the division in kind between Agnew and Wilson of the assets of the joint venture.

II.

The fair market value of the timberlands conveyed to Wilson in the year 1949 did not give rise to the receipt by him in that year of taxable income, except to the extent of the cash received by him, which amount of cash was duly reported by him in the joint income tax return filed with Jessie Wilson in the year 1949.

III.

By reason of the foregoing, plaintiffs are entitled to recover the sum of \$437,783.53, plus interest thereon at the rate of 6% per annum from August 27, 1954, and for their allowable costs and disbursements incurred herein.

Dated at Portland, Oregon, this 8th day of December, 1955.

/s/ CLAUDE McCOLLOCH,
District Judge.

Service of copy acknowledged.

[Endorsed]: Filed December 8, 1955.

The United States District Court
for the District of Oregon
Civil No. 8011

THE UNITED STATES NATIONAL BANK OF
PORTLAND (OREGON), Executor of the
Estate of Sam J. Wilson, Deceased, and
JESSIE WILSON,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

JUDGMENT

This cause having come on regularly for trial without a jury before the Honorable Claude McCulloch, Chief Judge of the above-entitled Court at Portland, Oregon, on the 25th and 26th days of October, 1955, plaintiffs appearing by C. E. Wheelock, Carl E. Davidson and Charles P. Duffy, their attorneys, and defendant appearing by C. E. Luckey, United States Attorney for the District of Oregon, and Allen A. Bowden, Attorney, Department of Justice, Washington, D. C., and the parties having produced testimony and evidence in behalf of their respective contentions as reflected by the pretrial order previously made and entered herein; and

The Court having considered fully all matters of fact and law presented by the parties, and Findings of Fact and Conclusions of Law having been submitted by plaintiffs, which Findings of Fact and

Conclusions of Law have heretofore been signed by the Court and entered of record on the 8th day of December, 1955.

Now, Therefore, based upon the foregoing Findings of Fact and Conclusions of Law,

It Is Hereby Considered, Ordered and Adjudged that plaintiffs have and recover judgment of and from defendant for the sum of \$437,783.53, plus interest thereon at the rate of 6% per annum, from August 27, 1954, and for their allowable costs and disbursements incurred herein.

Dated at Portland, Oregon, this 8th day of December, 1955.

/s/ CLAUDE McCOLLOCH,
District Judge.

Service of copy acknowledged.

[Endorsed]: Filed December 8, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: The United States National Bank of Portland (Oregon), Executor of the Estate of Sam J. Wilson, Deceased, and Jessie Wilson; and to C. E. Wheelock, Carl E. Davidson and Charles P. Duffy, 1525 Yeon Building, Portland 4, Oregon, Their Attorneys:

Notice Is Hereby Given that the United States of America, defendant above named, hereby appeals

to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the 8th day of December, 1955, in favor of plaintiffs and against defendant.

Dated: February 6, 1956.

C. E. LUCKEY,
United States Attorney,
District of Oregon;

/s/ EDWARD J. GEORGEFF,
Asst. United States Attorney.

[Endorsed]: Filed February 6, 1956.

United States District Court, District of Oregon
Civil No. 8011

THE UNITED STATES NATIONAL BANK
OF PORTLAND (OREGON), Executor of
the Estate of Sam J. Wilson, Deceased, and
JESSIE WILSON,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

October 25, 1955

Before: Honorable Claude McColloch, Chief Judge.

Appearances:

CARL E. DAVIDSON,
CHARLES P. DUFFY,
C. E. WHEELOCK,

Attorneys for Plaintiffs.

C. E. LUCKEY,

U. S. Attorney for the District of Oregon;
EDWARD J. GEORGEFF,

Assistant U. S. Attorney, and
ALLEN A. BOWDEN,
Attorney, Department of Justice,
Of Attorneys for Defendant.

TRANSCRIPT OF PROCEEDINGS

The Clerk: United States National Bank of Portland, Executor of the Estate of Sam J. Wilson, deceased, and Jessie Wilson, Plaintiffs, vs. The United States, Defendant.

Mr. Duffy: The plaintiffs are ready.

Mr. Georgeff: The defendant is ready, your Honor.

I would like to move the special admittance of Allen A. Bowden, of the Tax Division, Department of Justice, for the purpose of this case. We have a motion filed for his admittance.

The Court: So ordered. Put on your witnesses, Mr. Duffy.

Mr. Duffy: May it please the Court, our first and principal issue we have no witnesses upon. For

that reason I would like to beg the indulgence of the Court for a brief statement of our position.

The Court: All right.

Mr. Duffy: This is an action by the United States National Bank as Executor of the Estate of Sam Wilson, Deceased, and Jessie Wilson is also named as plaintiff.

Mr. Wilson died in October of 1950. Back in the early part of the year 1943, Mr. Wilson and one Samuel A. Agnew, who is a lumberman in Centralia, Washington, entered into an agreement, an oral agreement, in which it was agreed that Wilson would search for various timberlands in the States of Oregon and California, both county lands and privately-held lands.

The agreement between them was that they would find a particular parcel of real property having valuable [2*] timber on it, and Wilson would recommend the purchase of that timberland. Agnew would put up the money, and it was agreed that the title to the timberland would be taken in the name of Agnew.

Now, that went along for a number of years. Various tracts of timberlands were acquired, and the titles to those tracts were taken in the name of Agnew. In 1947, however, Mr. Agnew denied that there was any joint venture between them as Mr. Wilson contended, so they started to sue one another down in the Del Norte, California, courts. There were three of those cases filed in Del Norte

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

County, and the pleadings in those cases are Plaintiffs' Exhibits 1, 2 and 3. In those cases there were charges and countercharges, but the principal issue between them was the suit by Wilson for the establishment of a joint venture between them. Those cases were consolidated for trial and came on for trial on November 10, 1949.

After the cases had started and one day's testimony had been taken, Mr. Agnew being called as an adverse witness, the trial was recessed from Thursday until the following Monday. During that period of time the parties arrived at a settlement. On Monday, November 14th, 1949, a stipulation was entered into between the parties in which it was agreed that certain tracts of timberlands would be conveyed to Wilson and certain other tracts to Agnew, and the [3] parties would exchange mutual releases between them. Thereafter that settlement was carried out.

Sam Wilson and his wife Jessie Wilson, who is a co-plaintiff in this case and who appears as a plaintiff only because they filed a joint return for that year, filed an income tax return for the year 1949, in which they reported the fact of the dissolution of this joint venture and contended that because it was such it was nontaxable. The Government came in after that time and said that it was not a non-taxable dissolution of the joint venture but constituted compensation to Wilson for his personal services. They said that the value of the timberlands which Wilson received in that settlement was ordinary income to him, and they said the

value of those timberlands was some \$700,000. They set up rather a substantial deficiency against Sam Wilson and against his executor at that time, and thereafter that amount was paid by The United States National Bank as Executor and a refund claim was filed.

Our first principal contention also appears in the refund claim, of course, and is that the property which Wilson received in the settlement of this litigation constituted the receipt by him of assets in the dissolution of a joint venture and is therefore nontaxable; or, in the first alternative, that if the Court should find that was not the fact, but that this was compensation for his personal services, then we contend [4] that the timberlands were overvalued by the Government in determining the amount of compensation; and, as the second alternative, the fact that these services took place over a period of more than 36 months and therefore they are entitled to spread the income over the years in which the services were performed, under the provisions of Section 107(a) of the old Code, the 1939 Code.

On this first contention it is the plaintiffs' position that the character of the proceeds received by Wilson in the litigation is determined by the nature of the claim which was thereby settled, so that in support of our first principal contention we offer Plaintiffs' Exhibits 1, 2 and 3, which are the pleadings in the three suits in Del Norte County, California, and Plaintiffs' Exhibi 4, which is the tran-

script of the first day's testimony at those consolidated trials, Plaintiffs' Exhibit 5, which is the written stipulation for the settlement of those cases, and also Plaintiffs' Exhibits 11 and 12, which are the refund claims and the statutory notice of disallowance. The remaining facts in connection with our principal contention are embodied in the pretrial order.

There is no substantial dispute about the facts here. The first alternative that we have deals with the valuation of the timberlands in Curry County, Oregon, and Humboldt County, California. The Government valued the [5] Curry County lands at \$8.00 per thousand and the Humboldt County lands at \$6.50 per thousand, whereas the plaintiffs contend that the values in November of 1949, when the settlement was effected, did not exceed \$4.00 per thousand on the Curry County lands and \$2.50 on the Humboldt County, California, lands.

The Court: Following the usual practice in tax cases, all of the exhibits identified by the pretrial order are deemed to have been offered and admitted in evidence, and are admitted in evidence subject to all objections that may have been heretofore stated or may hereafter be stated prior to the final submission of the case.

(The documents referred to and identified in the pretrial order, having been previously marked as pretrial exhibits by the reporter, were received in evidence as Plaintiffs' Exhibits 1 to 12, inclusive, and Defendant's Exhibits

A to L, inclusive, Defendant's Exhibit N, Defendant's Exhibits P, Q and R, respectively.)

Mr. Duffy: The plaintiffs will call Mr. Newhouse. [6]

S. O. NEWHOUSE

was produced as a witness in behalf of the Plaintiffs and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Davidson:

Q. Where do you reside, Mr. Newhouse?

A. Wedderburn, Oregon.

Q. In what county?

A. Wedderburn is located in Curry County.

Q. What is the county seat of Curry County?

A. Gold Beach.

Q. Where is Wedderburn located with reference to Gold Beach?

A. Directly across the river on the north side from Gold Beach.

Q. What is your business, Mr. Newhouse?

A. Real estate broker.

Q. How long have you been engaged in that business?

A. 18 or 19 years, all in Curry County.

Q. Were you actively engaged in that business in the year 1949? A. Yes.

Q. How extensive were your transactions as a broker in timber in Curry County?

(Testimony of S. O. Newhouse.)

A. The largest percentage of my real estate business was timber and timber sales. [7]

Q. Did you handle a number of sales in the year 1949? A. I did.

Q. Are you familiar with the timberland owned by Sam Wilson in Township 36 South, Range 14 West of the Willamette Meridian? A. I am.

Q. Have you ever handled any of that timber for sale?

A. I sold one tract that was involved in this settlement between Sam Agnew and Sam Wilson. One of the lawyers received it, as I understand it, in part payment for his services.

Q. What was that lawyer's name?

A. Spears.

Q. In other words, you sold a piece—I believe it is covered in the pretrial order—that Spear received from Sam Wilson. When was that sale made?

A. The sale was made, as I recall, in '49.

Q. Do you remember the price at which it was sold? A. Approximately \$3.80 a thousand.

Q. That was in what part of '49, would you say?

A. Well, I think I have it written down here. I better check it. I was mistaken. The deal was closed in 1950. I am not certain whether it was made in '49 or not. The deal was closed in 1950.

Q. Now, were you familiar with the values of timberlands [8] in Curry County in 1949 and 1950?

A. Yes.

Q. What was the trend of prices between No-

(Testimony of S. O. Newhouse.)

vember 14, 1949, and 1950? Were they up in 1950, or did they go down?

A. Timber sales in 1949 in Curry County were very few. There was a slump in lumber prices. In 1950, why, there was a considerable amount of timber changed hands.

Q. Based upon your experience and knowledge of timber values in Curry County in 1949, what is your opinion as to the fair market value of the Wilson tract in Township 36 South, Range 14 West, on November 14, 1949, per thousand?

A. In my opinion the average price of this timber involved was approximately \$4.50 a thousand.

Q. That would be your estimate of the market value? A. Yes.

Q. At that time? A. Yes.

Q. That is your estimate of the value of the timber? A. Yes.

Q. In such a sale would there be any additional value allocated to the land?

A. In my opinion at that time, no.

Mr. Davidson: You may cross-examine. [9]

Cross-Examination

By Mr. Bowden:

Q. Mr. Newhouse, have you acquainted yourself with the cruises that were made of that particular timber in the early part of 1950?

A. Yes. They were available to me at that time.

Q. You acquainted yourself with the amount of timber on that particular tract in Curry County?

(Testimony of S. O. Newhouse.)

A. Yes.

Q. Are you acquainted with any other sales of this precise timber at or about the early part of 1950 or the latter part of 1949?

A. Well, I made probably around 35 or 40 sales of timber in that area during that time.

Q. I was referring to this particular timber that was owned by Mr. Wilson.

A. I beg your pardon. I don't follow your question.

Q. Mr. Wilson owned certain timber in Curry County in 1949? A. Yes.

Q. Now, you have stated that there was a sale of that timber, of that particular timber, by Mr. Spears. Are you acquainted with any other sale of that precise timber on or about November, 1949, or the early part of 1950?

A. Well, as far as I know, there wasn't any other Sam Wilson timber sold in '49, outside of this sale I made, that Spears [10] got in the deal.

Q. That was the only sale that you know of, of that particular timber, is the one that was made by Mr. Spears?

A. What do you mean by "that particular timber"? You mean particular timber in that particular area or the Sam Wilson timber?

Q. I mean the Sam Wilson timber.

A. Well, Sam Wilson owned other timber there that was sold earlier than that in that immediate vicinity, and I handled the sale of that.

(Testimony of S. O. Newhouse.)

Mr. Bowden: Your Honor, I would like to show him the cruise of that particular timber so he may refresh his recollection as to just the timber we are referring to that we are valuing in this case. That cruise is Plaintiffs' Exhibit No. 7.

Q. This is an agreed cruise of the timber that you are valuing, that you have placed a value of \$4.50 a thousand on. You said that you were acquainted with a sale by Mr. Spears in the early part of 1950. Now, are you acquainted with any other sales of this timber, the cruise of which you have in your hand, in or around the early part of 1950?

A. Well, there was one—I am not certain of the dates. That is a little too far back to get down to the exact year. But the Double O Lumber Company, or the parties involved in the Double O Lumber Company, bought some timber—I think [11] it was in Section 36, 14. I am not certain whether that was in 1950 or not. Is that the one you are referring to?

Mr. Bowden: No. There are no further questions, your Honor.

Redirect Examination

By Mr. Davidson:

Q. Just a moment, Mr. Newhouse. Are you familiar with timber values in Humboldt County, California, on or about November 14, 1949?

A. Only casually. I had timber listed for sale in Northern California during that period.

(Testimony of S. O. Newhouse.)

Q. In general, what was the relationship of the market values of timber, fir timber, in Humboldt County at that time as compared with fir timber in Curry County? A. It was somewhat less.

Mr. Davidson: That is all. Thank you.

Mr. Bowden: That is all.

(Witness excused.) [12]

OLIVER W. BETTES

was produced as a witness in behalf of Plaintiffs and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Davidson:

Q. Where do you reside, Mr. Bettes?

A. In Gold Beach.

Q. Is that Curry County, Oregon?

A. Yes.

Q. How long have you lived there?

A. About 10 years.

Q. You lived there, then, during the year 1949?

A. In that vicinity, yes, in or near Gold Beach.

Q. What is your business?

A. Sawmill, lumberman.

Q. Are you operating by yourself or with others? A. I have a partner.

Q. What is the name of your company?

A. Gold Beach Lumber Manufacturing Company and Ocean View Lumber Company.

(Testimony of Oliver W. Bettes.)

Q. What was your business in the year 1949 down there?

A. In the Double O Lumber Company at that time.

Q. Were you a partner in that company?

A. Yes, sir.

Q. Did you or your company purchase timber in Curry County [13] in the year 1949, or at about that time? A. Yes.

Q. Are you familiar with the timber owned by Sam Wilson in Township 36 South, Range 14 West, in Curry County? A. Yes.

Q. Have you ever purchase any of that timber?

A. Yes.

Q. When was that?

A. 1947, we bought—or in '48 we bought 16,000,-000 feet of that Sam Wilson tract.

Q. What price did you pay for it at that time?

A. \$3.00.

Q. \$3.00 per thousand? A. Right.

Q. Are you familiar with fir timber values in Curry County during the year 1949?

A. Pretty well, yes.

Q. What, in your opinion, was the fair market value per thousand of the Curry County tract of Sam Wilson on November 14th, 1949?

A. Well, \$4.50 would be the absolute limit.

Q. It would be no more than \$4.50?

A. No more.

Q. Now, in speaking of that price of timber

(Testimony of Oliver W. Bettes.)

would there be any additional amount paid or allowed for the land value [14] itself?

A. The land was not considered to be worth anything at that time.

Q. Are you familiar at all with fir timber values in Humboldt County in 1949, Humboldt County, California?

A. No, I am afraid not.

Mr. Davidson: You may examine.

Cross-Examination

By Mr. Bowden:

Q. Could you tell me whether you purchased the 16,000,000 feet from Sam Wilson in the early part of 1948 or in the latter part of 1949?

A. It was September, 1947, that the original deal was made. Later the deal was altered in 1948 or '49—in 1949, it was, the contract was revised somewhat.

Q. Is the timber that you purchased in an area close to the timber that is presently under consideration?

A. Yes, it is more or less surrounded by this in question.

Q. Have you acquainted yourself with the cruises that were made in the early part of 1950 of the Curry County timber?

A. No, except that part that we purchased.

Q. Did you go on the Curry County timber that is presently under consideration for the purpose of examining it and for the purpose of testifying at this trial? [15]

A. No.

(Testimony of Oliver W. Bettes.)

Q. You haven't been on that timberland?

A. Oh, yes.

Q. When were you last on it, do you recall?

A. Well, I have been on it frequently, ever since we bought that timber.

Q. So you are acquainted with the type of timber that did grow on that particular land?

A. Oh, yes.

Q. In 1949? A. Yes.

Mr. Bowden: I have no further questions.

Mr. Davidson: That is all.

(Witness excused.) [16]

JAMES M. WELLS

was produced as a witness in behalf of Plaintiffs and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Davidson:

Q. Where do you reside, Mr. Wells?

A. Redding, California.

Q. What is your present business?

A. I am in the wholesale lumber business.

Q. How long have you resided in Redding?

A. Since early 1949.

Q. What was your business or occupation in or around Redding in the year 1949?

A. I was the manager of the Trinity County Timber Company.

(Testimony of James M. Wells.)

Q. Were you interested in that company?

A. Yes.

Q. Was that a corporation? A. Yes.

Q. What was your duty in connection with that company in 1949?

A. Primarily it was management of the timber, the fire protection, taxes, and so forth, and also in an endeavor to dispose of the timber by selling.

Q. Did you make efforts to sell that timber in the year 1949? [17] A. Yes.

Q. Did you sell it? A. No.

Q. Where was the timber in which you were interested located with reference to Township 9 North, Range 3 East, Humboldt Meridian?

A. It was south and east about 25 miles. That is, speaking of the centers of the tracts.

Q. Did you talk to people that year in connection with the sale of your timber about timber values? A. Yes.

Q. And as a result of your experience in the year 1949 did you reach a conclusion as to the timber values in Humboldt County, California?

A. Yes.

Q. Have you ever been on the Wilson tract in Humboldt County? A. Never have.

Q. I mean the tract that is located as I have described here. I want to ask you, as a result of your experience and knowledge, what is your opinion as to the value on November 14, 1949, of a tract in Sections 8, 9, 17, 18, 19, 20 and 29 of Township 9 North, Range 3 East, containing 19,000,000 feet

(Testimony of James M. Wells.)

of old-growth fir, approximately 50 per cent peelable, and 38,000,000 feet of merchantable fir, in that particular area?

A. I would say that it would have a top value of \$2.00, and [18] it would be very questionable whether it could be sold at that.

Q. That is, on November 14th, 1949?

A. That is right.

Q. What was the general situation of timber values, particularly fir timber in Humboldt County, in the latter part of 1949?

A. The area that I was particularly interested in—I don't believe there was any major sale made in 1949. There were numerous small sawmills went out of business. The market was bad, and timber was not moving. I contacted several large companies and couldn't arouse any interest at all.

Q. In estimating your per-thousand price did you take into consideration any value that might be attached to the land?

A. At that time I believe the prices always included the land as a part of the price.

Q. In other words, your \$2.00 price would include the timber and land on which it stood?

A. Yes.

Mr. Davidson: You may cross-examine.

(Testimony of James M. Wells.)

Cross-Examination

By Mr. Bowden:

Q. Is it not true that the timber business and the price on sales of timber is sometimes determined by the time of the [19] year; that there are certain seasonal fluctuations in the timber business by reason of weather and by reason of roads?

A. I think that is true, yes.

Mr. Bowden: I have no further questions.

Mr. Davidson: That is all. [20]

* * *

ELMER BANKUS

was produced as a witness in behalf of the Defendant and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bowden:

Q. Mr. Bankus, where do you reside?

A. Brookings, Oregon.

Q. How long have you been residing in Brookings? A. Since 1933.

Q. What is your present business in Brookings?

A. A public utility, water department, privately owned.

Q. Did there come a time in or around the years 1943, '44, '45 or '46 that you had occasion to sell a tract of timber which you owned at that time?

(Testimony of Elmer Bankus.)

A. Yes.

Q. Do you recall to whom you sold?

A. To Sam Agnew.

Q. Do you recall the price that was paid by Mr. Agnew for that particular timber?

A. \$100,000.

Q. Did there come a time in that transaction when you entered into an escrow agreement regarding the sale of that particular timber?

A. Yes, there was.

Q. Do you recall from an examination of the escrow agreement [37] that Mr. Wilson's name appeared thereon? A. Yes.

Q. Do you recall what his full name was?

A. Sam Wilson. I don't remember whether he had a middle initial or not.

Q. Do you recall how he was represented on that escrow agreement?

Mr. Duffy: Excuse me. What was the question, please?

(Last question read.)

Q. (By Mr. Bowden): Do you recall how Mr. Wilson's name appeared on the escrow agreement?

A. As agent.

Q. As agent for whom? A. Sam Agnew.

Mr. Duffy: Just a minute, please. The plaintiffs will object to all this line of testimony seeking to go into and retry this joint venture litigation. Plaintiffs would like to record their objection to any testimony which attempts to go into the individual

(Testimony of Elmer Bankus.)

transactions or attempts to relitigate the issues which were decided in the settlement in the Del Norte County cases.

The Court: He may answer subject to the objection.

Q. (By Mr. Bowden): Prior to the time that this escrow agreement was entered into, did Mr. Wilson have occasion to discuss with you the possibility of your selling this particular [38] timber?

A. Yes.

Q. Do you recall how Mr. Wilson held himself out at that time in respect to Mr. Agnew?

A. As his agent.

Mr. Duffy: Plaintiffs will make the further objection that the testimony of this witness is not the best evidence. If there was a written escrow agreement, it should be produced.

Mr. Bowden: Your Honor, Mr. Bankus came into town this morning and he has brought with him the original of that document. We were unable to procure it prior to that time. I would like to offer that document as one of the Government's exhibits, with your permission.

The Court: Admitted, subject to Mr. Duffy's objection.

(The Escrow Agreement referred to was marked as Defendant's Exhibit W for Identification.)

Q. (By Mr. Bowden): Do you recall how Mr. Wilson held himself out at the time he was negotiat-

(Testimony of Elmer Bankus.)

ing with you on this particular transaction in respect to Mr. Agnew?

Mr. Duffy: Excuse me. I don't wish to continue making objections, but we would also like to record the objection that this is an attempt to prove agency by the declaration of an agent. It is also the testimony of a deceased person, which [39] is not admissible except where it is against his pecuniary interest.

The Court: He may answer subject to the objection.

Q. (By Mr. Bowden): Do you recall how Mr. Wilson represented himself?

A. As agent for Sam Agnew.

Q. Did he at any time specify what the terms of that relationship were?

A. At one time two or three years before he consummated the deal he told me he was working on a 5 per cent basis.

Q. On a 5 per cent commission basis?

A. But that was two or three years—that was in '43. After that he made no comment as to his percentage, or anything like that.

Mr. Bowden: No further questions.

The Court: You may postpone your cross-examination until after you have examined those documents, if you wish.

Mr. Duffy: Thank you.

The Court: Take him off and put another witness on. You can examine it at recess.

(Witness withdrawn.) [40]

C. D. CUNNINGHAM

was produced as a witness in behalf of Defendant and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bowden:

Q. Mr. Cunningham, what is your profession?

A. Attorney-at-law.

Q. How long have you practiced that profession? A. 47 years.

Q. Where do you presently practice law?

A. Centralia, Washington.

Q. How long have you practiced in Centralia, Washington? A. 47 years.

Q. Have you ever represented Mr. Samuel Agnew? A. Yes, sir.

Q. How long have you represented him?

A. I represented him and his interests for 44 years.

Q. Were you his attorney or one of his attorneys in the proceedings referred to as the Del Norte County court proceedings? A. Yes, sir.

Q. And also the proceeding which was commenced in this court or was transferred to this District Court involving the Double O Lumber Company? A. Yes, sir. [41]

Q. Were you in attendance at the first day of testimony on November 10th, 1949, in Del Norte County? A. Yes, sir; I was there.

Q. Can you briefly recall to us the sequence of

(Testimony of C. D. Cunningham.)

events which occurred subsequent to the first day of trial as between Agnew and Wilson?

A. Well, prior to the trial there was some discussion concerning a settlement of their controversy, a settlement of all their litigation, but nothing was arrived at until—well, then the trial proceeded, as you have indicated. I have forgotten the date that you mentioned, but it proceeded and the testimony was taken, I think, for a part if not the whole of one day. Then the matter was adjourned by the Court, and it seems to me that the following day was Armistice Day, and they thought that a settlement might be perfected over the Armistice period.

Then my recollection is that after Armistice Day, Mr. Buffington of Gold Beach, who was associated as one of the attorneys for Mr. Agnew, became sick and the Court took another continuance for a day or two. It was during that period of time that they came to an agreement and settlement. Now that is my recollection of it. I think that is substantially correct. There was one day of testimony, I think, or practically a whole day, and I think Mr. Agnew was on the witness stand during all that time. [42]

Q. By reason of your representation of Mr. Agnew did he ever express to you a reason for concluding that litigation in the manner in which he did conclude it?

Mr. Duffy: We will have to object to what Mr. Agnew may have told him. Both the plaintiffs and the defendant have made an effort to subpoena Mr.

(Testimony of C. D. Cunningham.)

Agnew, but he is not here. We will object to what Mr. Agnew may have told Mr. Cunningham.

The Court: He may answer subject to the objection.

The Witness: Just what was your question, please?

(Last question read.)

A. Well, the only reason that I know of was simply it was a way to settle a piece of litigation. That was all there was to it.

Q. (By Mr. Bowden): Did you ever prepare a partnership agreement, written partnership agreement, between Mr. Sam Agnew and Mr. Jack Weir, and others, on or about the year 1946?

A. Yes, sir; I did.

Q. Did you, as attorney for Mr. Sam Agnew, ever prepare a written partnership agreement between Mr. Agnew and Mr. Wilson?

A. No, sir.

Mr. Bowden: No further questions.

The Court: You may defer cross-examination. Call another witness.

(Witness withdrawn.) [43]

JACK WEIR

was produced as a witness in behalf of Defendant and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bowden:

Q. Mr. Weir, where do you reside?

A. Centralia, Washington.

Q. What is your occupation?

A. Office Manager and bookkeeper of S. A. Agnew Lumber Company.

Q. For the S. A. Agnew Lumber Company?

A. Three different companies.

Q. How long have you held that position?

A. Since March 21, 1908.

Q. What year, please? A. 1908.

Q. Are you in charge of the accounting records?

A. Yes.

Q. For these particular operations?

A. That is right.

Q. Are you the Mr. Weir who entered into a written partnership agreement with Mr. Agnew and others in or around the year 1946? A. Yes.

Q. Has an entry on your books and records come to your attention [44] recently involving an item of \$100,000, an entry of about January 1 of 1945?

A. Yes.

Q. Do you recall what those entries were?

A. As I recall it, it was ten drafts of \$10,000 each.

(Testimony of Jack Weir.)

Q. Do you recall how those were reflected on your books and records?

A. Well, at the time I put them on as accounts payable, but that could have been a misunderstanding at the time. I didn't know just exactly how to handle it, and Mr. Agnew didn't know just what to do about it, and so I just entered them up as notes payable at that time.

Q. The original entry on your books and records, then, would be a credit to notes payable and a debit to cash?

A. That is right.

Q. Do you recall the explanation that you reported on those records and books of that entry?

A. Well, there was not much of an explanation to it, other than just a cash entry.

Q. Was there a notation to the effect that this was ten \$10,000 2½ per cent notes payable or maturing in one year?

A. That is right. As I recall it now, that was the way it was, yes.

Q. And you believe that there actually had been ten \$10,000 drafts? [45]

A. As I remember it, they were drafts, yes.

Q. Do you recall the disposition of the notes payable account? What was the subsequent entry?

A. Well, when the whole case was settled, that was credited back to the timber account.

Q. You closed out the notes payable account?

A. Yes.

Q. And credited it to the timber account?

A. Timber account. There were so many differ-

(Testimony of Jack Weir.)

ent timber deals involved that that was the final entry on the books.

Mr. Bowden: No further questions.

Cross-Examination

By Mr. Duffy:

Q. Mr. Weir, the entries to which you now make reference consisted of an entry in the notes payable account of S. A. Agnew Lumber Company on January 24, 1945, entitled Bank of America, S. J. Wilson, ten \$10,000 notes, \$100,000. Is that correct?

A. Yes, sir.

Q. Is it also correct that on December 31, 1950, you credited the notes payable account and debited the timber account for \$100,000; is that correct?

A. On what date was that?

Q. The entry was made as of December 31, 1950. That was [46] after the settlement of the Agnew-Wilson litigation.

A. The notes payable, as I recall, was charged and the timber account credited at that time.

Q. Yes, that is right. The \$100,000 was taken out of notes payable.

A. It was written off, yes.

Q. Now, I will ask you whether Mr. T. E. Williams, the Revenue Agent sitting here at the table, and Mr. William Holm, a certified public accountant representing plaintiffs, recently visited your office to look at these entries?

A. Yes, they did some time ago.

(Testimony of Jack Weir.)

Q. I will ask you whether at that time you did not advise both of them that you had no explanation for these items in the S. A. Agnew books?

A. I don't remember the exact words, but I just told them the plain facts the way it was handled, and that is about all I could do.

Q. Were these entries made in here at the request of Mr. Agnew?

A. Well, Mr. Stoneworth handled our accounts. He is a certified public accountant in Seattle. I guess it was between him and Mr. Agnew.

Q. Now, on the same date, January 24, 1945, when the notes payable account first shows these ten \$10,000 notes, Bank of America, S. J. Wilson, the books of S. A. Agnew Lumber Company [47] also show a deposit of \$100,000 in the cash account on that same date; is that correct?

A. What date was that?

Q. January 24, 1945. That was the same date as the entry was made in the notes payable account.

A. Yes, that would be the same time.

Mr. Duffy: That is all.

Mr. Bowden: That is all.

(Witness excused.)

(Short recess.)

Mr. Bowden: Recall Mr. Cunningham.

Mr. Duffy: Insofar as the plaintiffs are concerned it will not be necessary to recall Mr. Cunningham. We have no cross-examination.

The Court: That is all, I guess, Mr. Cunningham. They say they don't want to question you.

Mr. Bowden: Your Honor, may I call him for additional testimony on direct, please?

The Court: Oh, yes. [48]

C. D. CUNNINGHAM

a witness produced in behalf of Defendant, resumed the stand and was further examined and testified as follows:

Direct Examination

By Mr. Bowden:

Q. Do you recall the testimony that you gave a few moments ago, Mr. Cunningham?

A. Yes.

Q. Would you recall, please, the events that took place in the settlement of the Wilson-Agnew litigation once again, please, and specifically would you recall what your advice as an attorney was to Mr. Agnew in arriving at that settlement and the basis that you suggested to Mr. Agnew upon which the settlement could be arrived at?

Mr. Duffy: The plaintiffs will object to any testimony to show the motives which actuated the parties in making a settlement of the litigation.

The Court: He may answer if he wishes to, subject to the objection. He may not want to disclose it.

The Witness: I, myself, of course, cannot waive the privilege.

The Court: I will permit you to claim privilege.

The Witness: Very well. Thank you, sir.

(Testimony of C. D. Cunningham.)

The Court: He claims the privilege.

The Witness: I beg your Honor's pardon. [49]

The Court: He is claiming the privilege of attorney and client.

The Witness: I haven't claimed it.

The Court: Oh, you haven't?

The Witness: No.

The Court: Answer it if you want to.

The Witness: What actually occurred was during the course of the proceedings down there when we were attempting to arrive at a settlement of the whole controversy, not only the litigation there but litigation pending in this court and I think in the courts of Curry County, Oregon, we ascertained how much of the timberlands Mr. Wilson wanted in the way of settlement and how much Mr. Agnew had paid for those timberlands. That was determined, and it amounted to approximately \$75,000, is my recollection of it; not what the timberlands were worth, but what Mr. Agnew had paid for these timberlands. When we arrived at that conclusion of what they were worth—or what Mr. Agnew had paid for them, then we proceeded to settle the controversy by entering into an order or stipulation wherein Mr. Agnew was to convey by quitclaim deed to Mr. Wilson the amount which Mr. Wilson got, and Mr. Wilson conveyed to Mr. Agnew the other lands. Now that was how the settlement was arrived at.

Q. In arriving at that settlement, was any con-

(Testimony of C. D. Cunningham.)

sideration given to what the services of Mr. Wilson had been worth to Mr. Agnew? [50]

A. There was a letter here some place—we had it at that time, and perhaps you have it in the file—wherein Mr. Wilson, as I recollect it, had written Mr. Agnew a letter, and among other things he said he had been working for Mr. Agnew and in his interests for three years, and that he thought his services were worth \$150,000, or \$50,000 a year. And that was considered in making and accepting the settlement that was arrived at.

Mr. Bowden: Thank you, Mr. Cunningham. No further questions.

Cross-Examination

By Mr. Duffy:

Q. Mr. Cunningham, to refresh your recollection as to that letter from Mr. Wilson to Mr. Agnew, isn't it a fact that he stated that he had worked for three and a half years on this deal?

A. Oh, I think so. I think he did, Mr. Counsel. I think he did.

Mr. Duffy: I have no further questions.

Mr. Bowden: Thank you, very much.

(Witness excused.)

Mr. Bowden: The Government has no further witnesses, your Honor. [51]

Mr. Duffy: Excuse me, your Honor. Mr. Bankus was to be examined further on cross-examination. I believe he was excused temporarily.

ELMER BANKUS

was recalled as a witness in behalf of the Defendant and was further examined and testified as follows:

Cross-Examination

By Mr. Duffy:

Q. Mr. Bankus, I understand your testimony on direct examination was to the effect that Mr. Wilson had at one time stated to you that he was getting a 5 per cent commission on these transactions?

A. That is right.

Q. In order to get a commission he would have to be a real estate broker, would he not, if you know?

A. I suppose on timber. I am not familiar with the law on timber. I don't know how he was employed, whether he was on salary or not. I wouldn't know what his connection was, as far as how he was employed. On straight brokerage, I would think offhand yes.

Q. Are you aware of the fact that Mr. Wilson ever had a broker's license?

A. No, I am not.

Q. Did you pay any commission to Mr. [52] Wilson? A. Beg pardon?

Q. Did you pay any commission to Mr. Wilson?

A. No, I didn't. I paid George Dickinson, a broker.

Q. Excuse me?

A. I paid Mr. George Dickinson, a broker. George Dickinson was my broker. He handled it

(Testimony of Elmer Bankus.)

for me. He represented me in the sale, George Dickinson of Gold Beach.

Q. Was Mr. Wilson attempting to negotiate this sale? What was Mr. Wilson doing in this transaction?

A. Well, I met him through George Dickinson. I met Wilson through George Dickinson, so it was no concern of mine as to whether he had a broker's license. I was dealing with George Dickinson, who did have a broker's license.

Q. What did Mr. Wilson do in this transaction?

A. Well, he was representing Mr. Agnew, so he told Mr. Dickinson and me.

Mr. Duffy: That is all.

(Witness excused.)

Mr. Bowden: Your Honor, I would like to move the admission of Government's Exhibit W, which has been marked for identification.

The Court: Is that a new exhibit?

Mr. Bowden: Yes, your Honor.

The Court: Admitted on the same terms as the others. [53]

Mr. Duffy: The plaintiffs, for the record, would like to object to the admission of this exhibit upon the grounds previously stated as to the testimony of Mr. Bankus on the same subject.

The Court: Admitted, subject to the objection.

(The Escrow Agreement referred to, having been previously marked for identification, was received in evidence as Defendant's Exhibit W.)

The Court: Rebuttal, Gentlemen. The Government has rested.

Mr. Davidson: We would like to recall Mr. Newhouse for a few questions. [54]

S. O. NEWHOUSE

was recalled as a witness in behalf of Plaintiffs, in Rebuttal, and was further examined and testified as follows:

Direct Examination

By Mr. Davidson:

Q. Mr. Newhouse, did you hear the testimony of Mr. Wakeman on the stand here? A. Yes.

Q. A question has arisen in connection with his testimony as to how many sales of fir timber were made in Curry County in the year 1949. Will you tell me from your records how many sales you personally handled in the year 1949 in the general vicinity of any of the Wilson timber?

A. This list I have here was made out from my records. I don't have the exact dates the sales were made, but, as nearly as I can tell, during the years '48 and '49 there was no particular difference in the values of timber. In other words, during 1949 there was very little timber changed hands. I have eight of them here listed.

Q. Will you read off the prices at which each of those eight sales was made?

A. You want just the prices or the companies——

Q. Just the prices of each of them.

(Testimony of S. O. Newhouse.)

A. \$3.25, \$2.00, \$3.00, \$1.30, \$2.90, \$2.00, \$2.00 and \$3.80.

Q. Now, with reference to distance, which would be the farthest [55] of these sales from the location of the Wilson timber?

A. I don't think any of them would be as much as 15 miles.

Q. Were there other sales in the county by you in the same year that you did not pick up in this list?

A. Yes. I didn't list those that I didn't consider comparable.

Mr. Davidson: That is all. Thank you.

Cross-Examination

By Mr. Bowden:

Q. From your list can you tell me how many board feet you have recorded on those sales that you just mentioned?

A. You want the total or each sale?

Q. Just the total.

A. About forty-eight million feet.

Q. Forty-eight million feet? A. Yes.

Q. Total? A. Yes.

Q. On those sales did you represent the buyer or the seller?

A. In each case I represented the seller.

Mr. Bowden: No further questions.

Mr. Davidson: Nothing further.

(Witness excused.)

[Endorsed]: Filed November 16, 1955. [56]

PLAINTIFF'S EXHIBIT No. 4

In the Superior Court of the State of California
in and for the County of Del Norte

No. 4060

SAMUEL J. WILSON,

Plaintiff and Cross-Defendant,

vs.

SAMUEL A. AGNEW,

Defendant and Cross-Complainant.

Before: Honorable Samuel F. Finley.

Appearances:

For the Plaintiff:

C. E. H. MALOY,

WM. W. SPEER.

For the Defendant:

IRWIN QUINN,

C. D. CUNNINGHAM,

COLYER BUFFINGTON.

Thursday, November 10, 1949—10:30 A.M.

The Court: This morning, we have Samuel Wilson vs. Samuel Agnew, No. 4060, and also the cases that were to be tried at the same time. There were three cases, I believe. There were to be.

Mr. Speer: They were Agnew vs. Wilson, No.

Plaintiffs' Exhibit No. 4—(Continued)

3801, and Agnew vs. Wilson, No. 4061. I think that is all.

Mr. Quinn: And this case is Wilson vs. Agnew.

Mr. Speer: And the present one is 4060.

The Court: Then there are two: 4060 and 3801 and 4061—three of them.

Now, that is the understanding among all counsel, that these are to be consolidated for trial?

Mr. Speer: That is right.

Mr. Quinn: Yes.

The Court: Let the record show that that has been stipulated.

Mr. Speer: I might state that 3801 consists of a complaint and answer, and 4060 consists of complaint and cross-complaint, and 4061 consists of a complaint and answer.

The Court: I want to get the cases straight. It has been stipulated by counsel, then, pursuant to the conference we have just had, that Mr. and Mrs. Quayle may be appointed and act as official court reporters for the purpose of this trial. Now, that is agreed to by everyone? [1*]

Counsel: Yes.

The Court: You stipulate, then, that they act in place and stead of the official court reporter for Del Norte County, who is Miss Margaret Duffy?

Counsel: Yes.

The Court: The clerk will give the oath for both reporters.

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

Plaintiffs' Exhibit No. 4—(Continued)

(Thereupon, Mr. and Mrs. Quayle were duly sworn as official reporters for the case.)

The Court: All right, counsel, you may proceed.

Mr. Speer: On behalf of the Plaintiff, Mr. Wilson, we wish to move for leave to file an amendment to the complaint in case No. 4060. I might say that the amendment merely adds three parcels of land or property to the exhibit, and does not change the issues in the least.

The Court: Three parcels of property to Exhibit A?

Mr. Speer: Yes, in 4060.

Mr. Quinn: Before agreeing to that would you kindly indicate to us what tracts of timber they are?

Mr. Speer: Well, the first parcel mentioned on the amendment to the exhibit is in Humboldt County, and the one listed under "private" land. Other than that, I can't further identify it. It is a one-sixth undivided interest in the section——

Mr. Quinn: That is sufficient.

Mr. Speer: Then the second parcel listed in [2] amendment to Exhibit A under tax title land, was purchased from Trinity County at a tax sale. It consists in three quarters in three different sections.

The third parcel which is listed under tax title land is land that was acquired from the Evans Products Company in exchange for certain cedar

Plaintiffs' Exhibit No. 4—(Continued)

at the time of the original tax sale on or about the first of September, 1943, I believe.

Mr. Quinn: That isn't Section 36, though, is it?

Mr. Speer: No, sir.

We have have leave to file that amendment? To the Exhibit A?

The Court: If there is no objection, it will be permitted. You have the written amendment?

Mr. Speer: Yes, I presented it to the clerk.

The Court: Then, pursuant to the request of counsel, the written amendment just handed to the clerk will be considered as an amendment to the complaint, to Exhibit A to the amended complaint.

Mr. Quinn: At this time, may it please the Court, I would like to have Mr. C. D. Cunningham, an attorney of the State of Washington, at Centralia, entered as attorney in this matter by courtesy.

And also Mr. Colyer Buffington of Gold Beach, Curry County.

The Court: Very well. Let the record show that Mr. Irwin Quinn, attorney of record in California, has asked [3] the association of Mr. C. D. Cunningham of the State of Washington, and Mr. Buffington, of the State of Oregon; and inasmuch as they are being associated with local counsel, that motion will be granted, and will be associated counsel in the action.

Mr. Cunningham, what is your address?

Mr. Cunningham: Centralia.

The Court: And, Mr. Buffington, yours is Gold Beach?

Plaintiffs' Exhibit No. 4—(Continued)

Mr. Buffington: Gold Beach.

The Court: Are there any more preliminaries? If not, you may proceed with the case, Mr. Maloy.

Mr. Maloy: Of course your Honor is familiar with the pleadings under which Mr. Wilson is suing in 4060, for the purpose of establishing a joint venture and an interest in certain timber lands in Oregon and California by virtue of the terms and conditions of that joint venture.

I think, however, in order that the Court may more closely follow, and possibly better appreciate the testimony as it goes in—which probably will be quite voluminous on the part of Mr. Wilson, I will make a statement of what the Plaintiff seeks to prove.

I will go back to where Plaintiff and Defendant first met in Centralia, Washington, in the year 1943, I believe it was, in either April or May, 1943.

At that time, Mr. Wilson had been in the timber business down in South Western Oregon, for some period of time— [4] I believe commencing in '41 or '42, and had been dealing and negotiating in timber, and had obtained an option on the two pieces of timber. One is known as the Phillips Tract, and the other piece is known as the Lobster Creek Tract.

He had been negotiating with a group of individuals at Chehalis, Washington, for some period of time. A group was formed which took an option on these two parcels of timber. The option was in existence at the time that Mr. Wilson first met Mr.

Plaintiffs' Exhibit No. 4—(Continued)

Agnew, I believe that he was introduced by a man by the name of Anderson, who has since passed away.

Mr. Wilson advised Mr. Agnew of the fact that an option on these two tracts of timber, that he had an option. He advised Mr. Agnew, also, that the option had not been exercised, but the time for the exercise of the option had not expired.

He further advised Mr. Agnew that if the option was not taken up by what is known as the Chehalis Group that he would make a deal with Mr. Agnew, Mr. Agnew apparently being interested in the timber. Some time, either the latter part of April or the early part of May, Mr. Agnew gave to Mr. Wilson a check or draft, I don't remember which, for thirty-five thousand dollars, with which to pick up the option on it, I believe, or pay for the timber on the Phillips tract; and advised him that if the Chehalis Group did not pick up the option on those two tracts of timber, that he would make a deal with Mr. Agnew whereby for the thirty-five thousand dollars, [5] and eighty-eight hundred more, that the two tracts of timber could be had, and be taken in Mr. Agnew's name; and that he would, in effect, waive the profit which he had—that is, the difference between the price at which he had optioned the property to the Chehalis Group, and that which he had to pay for the timber; and that Mr. Agnew should retain the timber and they would sell it and split whatever profit they made over and above the forty-three thousand and eight hundred

Plaintiffs' Exhibit No. 4—(Continued)

dollars and any taxes or expenses that might have been accrued in the meantime.

And that agreement was accepted by Mr. Agnew.

Mr. Wilson, then, of course, used the thirty-five thousand dollars to encourage or persuade the Chehalis Group to promise to get busy on whether they were going to exercise the option. And they did exercise the option and took up the timber, and the thirty-five thousand-dollar draft or check was returned to Mr. Agnew.

In the same conversation, Mr. Agnew's attention was directed to the fact that there was a lot of county tax land in Curry County, Oregon, which it was possible to purchase. In other words, it was tax title land which the county had become owner of, and which Mr. Wilson had been working on with the view to getting the County Court—which, I believe, is the same as what is known as the county commissioners or supervisors in this State—to put up this timber for sale in large blocks so that it would be worth while for someone who wanted to build [6] a mill, or buy a mill in that district, to have timber with which to supply the mill for the sawing of timber into lumber. And that was discussed at the same time.

And it was also discussed at that time that this timber would probably be sold or purchased by a purchaser at different prices ranging from two to five dollars per acre.

And so there was some correspondence that will appear in evidence here, some letters written by

Plaintiffs' Exhibit No. 4—(Continued)

Mr. Wilson which was not answered by Mr. Agnew. But shortly thereafter Mr. Wilson was in Centralia many times while this was going on in the summer of 1943, and the parties agreed that Mr. Wilson would endeavor to get the timber put up in large blocks by Curry County, Oregon, at sale, and public sale, I believe. That the minimum price would be fixed, would endeavor to fix the minimum price of five dollars per acre, but would be classified according to the most inaccessible timber at two dollars an acre, and more accessible at three and four and the most accessible at five.

At the same time, there was discussed the matter of a mill. Now, at Port Orford, Oregon, at that time, there was a mill being operated by some people. I believe most of them were living in San Francisco. Operated by a corporation. They were in more or less financial difficulties. There was a large mortgage on the mill, and in these first conversations had at Centralia that were relative to the acquiring of the timber in Oregon and acquiring the mill at the same time, this [7] Port Orford mill was discussed.

And, from then on and during the summer of 1943 and the fall of 1943, and, as a matter of fact, for some considerable period, Mr. Wilson was very busy negotiating with the owners of the mill and, finally, with the mortgagee who held the mortgage on the mill, and endeavored to acquire title to the same.

At the same time, Mr. Wilson offered as an in-

Plaintiffs' Exhibit No. 4—(Continued)

ducement to Mr. Agnew the suggestion that he would secure the other timber, privately owned timber, so that he would have a nucleus in addition to the tax title timber for the operation of the mill if they were able to acquire it.

In August, 1943, a large quantity, several townships of tax timber, were offered for sale. The sale, however, was blocked by Mr. Buffington representing some clients of his, and it did not go through, Mr. Buffington having raised some legal questions as to the validity of the sale. So, because of that, Mr. Wilson employed a gentleman by the name of John C. Kendall, former judge of the court there in Oregon, to come down to Gold Beach and advise him and consult with the Court and the District Attorney, with a view of getting this timber, which the county owned and which it held for many years for delinquent taxes or non-payment of taxes, put up for sale in a legal manner.

And as I understand the facts, and I think the evidence will show it, there were conferences. And we have Judge Kendall's deposition, and he will tell you all about it, as will Mr. Wilson. [8]

And finally upon there having been numerous conversations and consultations and I believe, if my memory serves me right, Mr. Buffington participated in some of those conversations, the timber was put up for sale.

Going back to the first sale, Mr. Wilson put up his own, some fifty-six hundred dollars, paid over

Plaintiffs' Exhibit No. 4—(Continued)

to the county treasurer in August, and that was refunded to him.

And, on the second sale, Mr. Wilson did buy the timber in pursuance to an agreement that he had with Mr. Agnew that he would bid the timber in for the two of them under their agreement that Mr. Agnew would hold the title to the timber until he was reimbursed, or when the timber was sold he was to be reimbursed for the money that he put up, and the taxes that he paid; and if they sold the timber, any profit that they made would be divided fifty-fifty.

At the sale that took place, later in September of 1943, Mr. Wilson bid the timber in, and also paid another check or draft he had representing the sale, fifty-six hundred eighty-three dollars and some odd cents, to the county treasurer, along with some other money represented by check or draft that he obtained from Mr. Agnew.

And the title to the timber, most of it, was taken in the name of Mr. Agnew. However, there was one piece of timber taken in Mr. Wilson's name so that he could make a deal with another company known as the Evans Products Company, the details of which I won't go into now. [9]

All during the spring and summer of 1943, Mr. Wilson had been working on this matter with the County Court and the Commissioners, with the view of having the timber put up for sale. He received no compensation from Mr. Agnew at any time for the services. He paid his own expenses in connec-

Plaintiffs' Exhibit No. 4—(Continued)

tion with the matter; and, in fact, all during the time that the joint venture continued, which continued down to and until they ceased doing business in 1947, Mr. Wilson put up his money, paid his expenses for operating, his expenses for two or three automobiles which were worn out in rendering this service. He worked for no one else. He did no other work for anyone else with regard to the acquiring of timber and other tax title timber, which was purchased in Curry County under the same arrangement.

The tax title timber was also acquired in the State of California, I believe in Trinity County, and possibly in Del Norte and Humboldt Counties.

Now, during the course of that dealing together, timber was acquired from private owners. It seems that there was a good deal of timber, in Oregon, for instance, that had large amounts of delinquent taxes. One tract was known as the Bankus Tract, which your Honor will hear a good deal about. I believe the delinquent taxes were some thirty odd thousand dollars. That tract was acquired.

Other tracts were acquired. Privately-owned timber was acquired in the State of California. And during the course [10] of these dealings, Mr. Agnew and Mr. Wilson came to an agreement that on the privately-owned timber Mr. Wilson was to have a twenty per cent interest therein instead of the fifty per cent that he had in the tax title timber; and that when the timber was sold—and, of course, it was all bought for the only purpose of resale—at

Plaintiffs' Exhibit No. 4—(Continued)

a profit—that he should have the twenty per cent interest in the profit. Mr. Agnew should put up the money and that he should be reimbursed for the money that he put up and any taxes or other expenses that he was compelled to disburse in the carrying of the timber until it was sold.

Now, this arrangement continued, as I say, down to about 1947.

Along in the early part of '46, timber had become immensely valuable compared to what it was when it was acquired. As an illustration, I might cite the fact that some of this Curry County tax title timber was acquired in terms of timber for twenty-five or thirty cents per thousand, and in 1946 such timber had become worth four or five dollars a thousand.

At that time, Mr. Agnew began to cool off and become, shall I say, "cagey" or evasive. Mr. Wilson was urging and had been urging for some time in '45 and '46 that some of this timber be sold, and that it be liquidated, and that they take a profit. But Mr. Agnew was never willing to sell any timber.

So, along in the spring of '46, the relationship between these parties became more strained, and as time went on it became more strained until, finally, Mr. Agnew advised Mr. Wilson [11] that he had no interest whatsoever in any of the timber, or in any of the profit that might be obtained by the sale of the timber, and that he was, in fact, out. In fact I believe that Mr. Agnew stated he must have been out of his mind when he made any claim,

Plaintiffs' Exhibit No. 4—(Continued)

although during all that period of time Mr. Wilson had not received one cent of compensation from Mr. Agnew and had not been reimbursed for his expenses. And Mr. Wilson had worked for no one else or earned any money in any other timber deal except as to that pertaining to the joint venture which is alleged in the complaint and which we expect to prove to your Honor.

I think that brings us down to the time that Mr. Agnew first commenced suit over a tract of timber which is involved in one of these lawsuits here known as the Gilbert Thorp Tract.

On that suit being commenced, your Honor will recall that Mr. Speer, then representing Mr. Wilson alone, filed a counterclaim or cross-complaint about which there was considerable discussion; and later on it was determined that the safest thing to do would be to start the suit of Wilson vs. Agnew to establish the joint venture, which is the main suit that is involved here, under the number 4060.

Mr. Speer suggested that for your information I might explain that there are really three classes of timber involved in this lawsuit. There is the tax title timber in these various counties: Curry County, Oregon; Humboldt and Trinity and [12] Del Norte Counties in California.

Then, there is the title acquired from private owners. And I might say to your Honor that that acquired from private owners was acquired very cheaply. Mr. Wilson negotiated for months. In one case, I remember that he negotiated for over a

Plaintiffs' Exhibit No. 4—(Continued)

year endeavoring to get this privately-owned timber at an advantageous price. Timber since then has increased enormously in value. Some tracts, I believe, that he paid fifteen thousand dollars for, have increased to a value of two or three hundred thousand dollars.

And I point that out to your Honor because it, of course, establishes a motive of conduct for the Defendant in this action.

Then, there is the timber acquired from private owners, but acquired for the Port Orford Mill and to serve as a nucleus of timber to supply that mill if they got it through mortgage foreclosure, which was later on commenced, or through negotiations with the owners of that company, and to supply that mill with timber to be sawed into lumber, and a few tracts Mr. Wilson claims no interest in because it was acquired to induce Mr. Agnew to invest some fifty thousand dollars in the buying of the mortgage on the Port Orford Mill which was subsequently foreclosed.

But shortly before the sheriff's sales the Port Orford Mill Company went into bankruptcy under 77b down in San Francisco, and then later reorganized themselves in such a [13] way and got a loan from one of the government agencies in a sufficient sum to redeem and pay off the mortgage. So they didn't get the mill.

However, Mr. Agnew still has the timber, all of which has likewise greatly increased in value over the price for which Mr. Wilson obtained it.

Plaintiffs' Exhibit No. 4—(Continued)

And in all these transactions, let me say, your Honor, Mr. Agnew did not have anything to do with them. He didn't participate in any of them. He supplied Mr. Wilson with money, entrusted Mr. Wilson with large sums of money with which to buy this timber. Some went through escrow.

In any event, all of the negotiations over a period of months on that privately-owned timber was done by Mr. Wilson and without any compensation from Mr. Agnew therefor and at Mr. Wilson's expense.

I think that that gives you an outline of the history of the transactions between these two parties, your Honor. [14]

Mr. Irwin T. Quinn: Shall we make a statement now, your Honor?

The Court: If you wish to make a statement, Counsel.

Mr. Quinn: I think maybe it would be helpful to the Court for us to put our position before you now so that you will know what the issues are.

Quite contrary to anything that Counsel has just stated, in the first place our position is that we never entered into—that Mr. Agnew never entered into any joint venture with Mr. Wilson as alleged in the complaint, or any other type of joint venture or partnership or association for the resale of timber, or for the division of profit of any timber so acquired upon the resale of the same.

Going back to the Phillips and Lobster tracts, I want to state to the Court that the position in

Plaintiffs' Exhibit No. 4—(Continued)

that, as far as it will enter into this picture here, as a background, Mr. Agnew was not informed by Mr. Wilson that he had that timber under option. He said he had it for sale to him. So far as the Curry County timber is concerned, Mr. Agnew investigated that by his own men; he was informed of the county properties down there in Curry County might possibly be put up for sale. And it is true that Mr. Wilson did do the actual bidding, but under the direction of Mr. Agnew who was there at the time advising him what to bid on each particular parcel of land. The position that Mr. Agnew will take in this is that so far as all these different pieces of [15] timber is concerned, the acquisition of each of them was an individual proposition in itself.

Mr. Wilson, if he had a piece of timber to sell that he could acquire from some private individual, he would come to Mr. Agnew and say to him: "I can acquire this piece of property"—say the Frick property—"here for so much money." Mr. Agnew would make his investigation; he would send his men out to look at the timber, and if the timber was all right after his own cruisers had looked it over, and the price was all right that Mr. Wilson quoted him, without any further ado, Mr. Agnew says, "All right, I will take that."

Now, Mr. Wilson—we will show in this that he wasn't working for nothing anywhere along the line; that he, in all of these private deals, or a great many of them, he made a sizable piece of money,

Plaintiffs' Exhibit No. 4—(Continued)

a commission. He would buy it for so much, as in the Frick deal, for twelve thousand five hundred dollars; he would turn around and sell it to Mr. Agnew for nineteen thousand five hundred dollars, thereby making six thousand or seven thousand dollars for himself.

And we will show that deal after separate deal that he did, Mr. Agnew gave him a great deal of money—some three hundred and fifty thousand dollars during the course of their dealings together. Now this sum, so far as we are able to ascertain at the present time, Mr. Wilson paid out something like three hundred and—two hundred and seventy-one thousand dollars for the timber. [16]

The Court: What was——

Mr. Quinn (Interposing): No, I mean a hundred and seventy-one thousand dollars for the timber.

The Court: One hundred and seventy-one thousand?

Mr. Quinn: Yes. We will show that in addition to that there were other monies which Mr. Wilson obtained—for instance, in the Evans deal which has been referred to here as a piece of timber that was taken out of the county timbers when they were bid on at Curry County, and in the deal that was made between Mr. Agnew and Mr. Wilson whereby they were trading, if you remember, on even-up terms supposedly, it was discovered after that Mr. Wilson received six thousand dollars in cash from that county.

Plaintiffs' Exhibit No. 4—(Continued)

We will show that in the monies that exchanged hands up at Curry County that there was a refund of twenty-two hundred and seventy-five dollars—something like that—to Mr. Wilson. So, he has obtained in this large sums of money during these years. He hasn't done this for nothing. He did obtain a fair commission and fee on it at the time which was adequate, and the thing that I want to present was that so far as Mr. Agnew and Mr. Wilson's situation was concerned, never, at any time, was there any arrangement about a joint venture. There is nothing in writing about it. Whatever took place between these men was verbal. That Wilson didn't devote all of his time during those years to Mr. Agnew, nor, so far as Mr. Agnew was concerned, was it intended that he [17] should, and he attempted to sell timber lands to others.

We will show that in this complaint for some reason or other there has been a great deal of timber that isn't included, some eighty-eight hundred acres or more, and that is the private deal that they refer to here of the Reed, the Rutherford deal and a number of others where each—in each one of them, we will show that Mr. Wilson made a large amount of money.

And in this there are two propositions I want particularly to call the Court's attention to at this time. It is practically admitted in this case that Mr. Wilson now has some eighty-four thousand dollars of Mr. Agnew's money which Mr. Agnew gave him and which is admitted; twenty thousand eight

Plaintiffs' Exhibit No. 4—(Continued)

hundred dollars to buy what was called the Thorpe timber, which he took title to in his own name and still has title to, which is covered by the first action, 3801.

And there is the sum of twenty-five thousand dollars cash given in a check by Mr. Agnew to Mr. Wilson to purchase what is known as the Power Deal, to be used as earnest money on the purchase of quite a tract of timber. Mr. Wilson got the check; never returned it. Then there is the Lauff deal. Yes, the Power deal fell through. Then there is the Lauff deal. That is admitted, and Wilson's own position that he owes Mr. Lauff on that twenty-nine thousand and some odd dollars. Part of it came out of the twenty-six thousand-dollar draft that was given to Mr. Wilson for the purchase of Trinity County timber. [18]

However, there was some ten thousand dollars of that used in the Trinity County timber, but the balance of nineteen thousand or so evidently went into the Lauff Hotel, together with other monies that we can trace in it.

Then, in all these private deals, and there is ten or twelve of them, we figure that he has received thirty-five or forty thousand dollars in addition to the money that he has there. And we will show by draft and checks exactly the amount of money he got. The most accurate figure is three hundred and ten thousand six hundred and forty-six dollars. We will show by checks and drafts: Thirty-seven thousand in cash that was paid, and in addition to those

Plaintiffs' Exhibit No. 4—(Continued)

amounts, Mr. Agnew paid large drafts to others direct, as in the Curry County deal when he paid in two drafts—one in forty thousand and one in the sum of fifty-seven thousand dollars. Of course, added to all of that comes your taxes and other things, but I don't think that applies at this time. I don't think it has anything to do with this question of joint venture nor the increase in value. The valuation of that—that is probably true as far as that is concerned, but apparently they stress that because the timber has increased in value and that they are entitled to participate in it. Of course that has nothing whatsoever to do from the legal proposition of proving joint venture which we absolutely deny, and there was none that ever existed and the facts will prove that.

The Court: All right. [19]

Mr. Quinn: Do you want to know which order we want to take this up in?

The Court: What do you mean? Do you mean all three of these?

Mr. Buffington: The question is, your Honor, a little uncertain in our minds, I think. These three cases are consolidated for trial, and one of them, no, in two of them we are the plaintiffs. The other side is the plaintiff in the other. Now, the question which arises is the order of proof.

Mr. Quinn: If it is by majority, well, we have two.

The Court: I didn't know there was any con-

Plaintiffs' Exhibit No. 4—(Continued)

troversy on that. I believe the principal case is No. 4060.

Mr. Maloy: May I ask this: Without any consolidation of these cases, I think they would automatically be disposed of in 4060, because as a first and second cross-complaint in No. 4060 they have pleaded these matters which are involved in the other two actions. So, I believe, 4060 is the main case, and that is the case that should be heard first, and, as a matter of fact, in the hearing of that case, and the evidence of that case you will hear all of the evidence in regard to these other transactions. They come in automatically.

Mr. Buffington: I don't think there is any controversy. We are agreeable that they have the opening if they wish.

Mr. Quinn: We will agree to that.

The Court: All right. You may proceed.

Mr. Maloy: We will call Mr. Agnew. [20]

MR. SAMUEL A. AGNEW

called as a witness under Section 2055 of the Code of Civil Procedure, after being duly sworn, testified as follows:

Cross-Examination

By Mr. C. E. H. Maloy, Counsel for Plaintiff:

Mr. Maloy: If it please, your Honor, we are calling Mr. Agnew under Section 2055 of the Code of Civil Procedure.

Q. What is your name, please?

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

A. Samuel A. Agnew.

Q. Where do you live?

A. Centralia, Washington.

Q. How long have you lived there?

A. Most of my life.

Q. What business have you been engaged in while you were in Centralia, Washington?

A. Manufacturing lumber.

Q. Have you been engaged in the buying and selling of timber? A. No, sir.

Q. Have you bought any timber for your lumber manufacturing at Centralia? A. Yes, sir.

Q. Well, then, you have been engaged in buying of timber, haven't you? [21]

A. Buying of timber, yes, sir.

Q. Are you acquainted with one, or were you acquainted with one by the name of O. E. Anderson? A. Yes, sir.

Q. Where did he live?

A. At Chehalis, Washington, I believe.

Q. You are acquainted with Mr. Samuel J. Wilson, the plaintiff? A. Yes, sir.

Q. How did you happen to meet Mr. Wilson?

A. Mr. Anderson brought him to our office.

Q. When was that, Mr. Agnew?

A. Well, I would think, April of 1943. I am not sure.

Q. What part of April, 1943?

A. Well, I couldn't say.

Q. Do you recall if it was the early part or

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

latter part of April? A. I couldn't say.

Q. What—did you and Mr. Wilson on that occasion have any conversation about timber?

A. Yes, sir.

Q. What timber at that time did you discuss? Timber known as the——

A. (Interposing): Timber known as the Phillips tract.

Q. And where was the timber known as the Phillips tract located? A. Near Gold Beach.

Q. That is Gold Beach—— [22]

A. (Interposing): Gold Beach, Oregon.

Q. Oregon. And did you at the same time discuss a tract known as the Lobster Creek Tract?

A. I don't remember whether it was the first time—whether it was at that time or later.

Q. Where did this discussion take place, this first time you met Mr. Wilson?

A. In the office at Centralia.

Q. Your office? A. Yes, sir.

Q. And how long did it take?

A. The office of the Eastern Railway Lumber Company.

Q. Very well. How long did it take?

A. Well, I couldn't say.

Q. Well, were you there an hour together, two hours, or what? A. Well, possibly an hour.

Q. And did you arrive at any agreement of any kind at the time with Mr. Wilson? A. No, sir.

Q. When did you see Mr. Wilson the next time?

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

A. I don't remember. It was some time after that. I don't remember just when it was.

Q. Well, in the first discussion did Mr. Wilson tell you about the Phillips tract? A. Yes, sir.

Q. Did he tell you about how much timber it had on it, and the [23] character of timber, and accessibility or lack of that?

A. I don't think there was any mention made of the quantity of timber, but it was acres that was talked then.

Q. Well, was there no discussion about the amount of timber per acre that was located on the Phillips tract?

A. Not that I remember at all.

Q. Did you give him a check or draft for thirty-five thousand dollars on that day?

A. No, sir.

Q. Well, now, then, how long after that was it that you saw him the next time?

A. Why, I don't remember. Probably a couple of weeks.

Q. Did he advise you in the first conversation that the Phillips tract was under option to anyone?

A. No, sir.

Q. He didn't tell you it was under option to a group known as the Chehalis Group?

A. No, sir.

Q. Well, in the second conversation, which you say was a couple of weeks later, what did you talk about then?

Plaintiffs' Exhibit No. 4—(Continued)
(Testimony of Samuel A. Agnew.)

A. I think at that time he said that if the Phillips tract suited us——

Mr. Maloy: I can't hear you.

A. (Continuing): ——that if the Phillips tract didn't suit us he also had a tract known as the Lobster Creek tract, and he wanted to know if we would go down and look at it. [24]

Q. Had you gone and looked at the Phillips tract up to that time? A. I don't think so.

Q. Well, all right, what else did he say, if anything, about the Lobster Creek tract?

A. Well, he said the price on the Lobster Creek tract was fifty thousand dollars. He would sell it for fifty thousand dollars.

Q. Did he tell you—did he offer you the Phillips Creek tract in the second conversation?

A. Well, I don't remember which conversation it was, but he offered both.

Q. Did he offer the Phillips Creek tract in the first conversation? A. Yes.

Q. And at what price did he offer it to you?

A. Thirty-five thousand dollars.

Q. Did he discuss with you at that time what the price he was purchasing, or had the timber option for?

A. No. He just said that he would sell it free of all encumbrances for thirty-five thousand dollars.

Q. And he would sell the Lobster Creek tract

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

clear of all encumbrances for fifty thousand dollars, is that correct? A. Yes, sir.

Q. And was it at the second conversation that you had that you gave him the thirty-five thousand-dollar draft or check? [25]

A. No, we went down and looked at the first—I think we looked at the Phillips tract, and I think on a later trip we looked at Lobster Creek tract.

Q. When you say “we,” who do you mean by “we”?

A. Well, I think the first time was Mr. Sherwood and I, myself, and the second time there was Mr. Sherwood and Mr. Troxel and myself.

Q. Where is Mr. Troxel now?

A. Mr. Troxel is dead.

Q. I see. What else did you do when you went down and looked at the Phillips and Lobster Creek tract? Did you look at any other timber?

A. No, sir.

Q. You just went down to Curry County to look at that timber to see whether it was good timber and so forth?

A. Well, to see what our people wanted, whether they wanted it or not.

Q. Well, then, when you came back from that trip, after examining this timber, was it then that you gave him the thirty-five thousand dollars in the form of a check or draft?

A. I don't remember whether it was in regard to the trips. I don't remember just what trip it was.

Plaintiffs' Exhibit No. 4—(Continued)
(Testimony of Samuel A. Agnew.)

Q. Well, it was after you had made a trip to Oregon, wasn't it? A. Yes, sir.

Q. Yes. Well, then, you saw him then again after you had first—you talked to him once in April and you talked to him once in [26] May, then you made the trip down to Oregon. Is that the way I get it?

A. Well, I wouldn't say whether it was April or May, or whether they were both in April, but we made two trips to Oregon and we looked at the Phillips tract on one of the trips and I think the Lobster Creek another trip.

Q. All right. Well, then, was it after the second trip that you gave him the thirty-five thousand dollars in the form of a check or draft?

A. It was after the second trip.

Q. After the second. And when was that, can you tell us?

A. No, I couldn't tell you just exactly.

Q. Well, was it in May of 1943?

A. I couldn't say.

Q. Was it in June of '43?

A. Well, I don't know. It might have been.

Q. Well, what is your recollection on it? Have you any recollection on it at all?

A. It was strung along, I would say, strung along through April and May, and the fore part of June.

Q. All right, now, what—pardon me?

A. The early part of June, I would say.

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

Q. What did you give him the thirty-five thousand-dollar check or draft—which was it, a check or draft? A. A check.

Q. When did you give him that? [27]

A. I don't remember what trip it was that he was there, but he came there and wanted to know if we were interested in the timber. He said he had had other prospects.

Q. Did he tell you that that was an option to the Chehalis Group?

A. Later he did. He didn't tell me that it was optioned until after I told him we would take it.

Q. He didn't tell you that until after you had told him that you would take it?

A. That we would take the Phillips tract.

Q. He never mentioned to you that it was under option to the Chehalis Group?

A. No, sir; he did just prior to my giving him the check.

Q. He told you that it was under option to the Chehalis Group then? A. Yes, sir.

Q. But you have no way of fixing the date that you gave him that check for thirty-five thousand dollars? A. I have not.

Q. Well, what was the thirty-five thousand dollars for?

A. The Lobster Creek tract—I mean, the Phillips tract.

Q. The Phillips tract? Did he agree with you

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

then that he would have transferred to you the Phillips tract?

A. No, sir. But he told me it was under option at that time, and suggested that I give him the check, and if they didn't exercise the option, why, we—why, then, he would turn the papers [28] over to us.

Q. And you found out later—you were advised later, weren't you, that they did exercise their option?

A. Yes. [29]

Q. Were you advised of that?

A. When Mr. Wilson came back.

Q. When was that?

A. I think it was the same day.

Q. Well, the same day in what month?

A. I couldn't say.

Q. In June or July?

A. I think it was either in May or June.

Q. May or June? A. Yes.

Q. And then what happened to the thirty-five thousand-dollar check?

A. I said: "Well, take the Lobster Creek Tract," and he said, "I am sorry, but that is also under option," and then I asked him to give me the check.

Q. Now, during this period of April, May and June that you were dickering and examining and talking about the Phillips Tract or the Lobster Creek Tract, was there any discussion between you and him regarding the proposition that if the

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

Chehalis group did not exercise their option, that you would sell him the Phillips Tract or the Lobster Creek Tract at cost to him? A. No, sir.

Q. And no discussion at all with regard to your taking title to and entering into any kind of a deal in disposing of it and deriving profit? [30]

A. No, sir.

Q. Never any discussion to that effect?

A. No, sir.

Q. Was there any discussion at that time regarding the acquisition of any other property, timber, other than the Phillips Tract and the Lobster Creek Tract later?

A. Yes, after the first time when we looked at the Phillips Tract, and then, I think, it was the next trip we looked at the Lobster Creek tract.

Q. And that is what you went down there for at that time? A. Yes, sir.

Q. And that is the business that you transacted down there? That was the purpose of your going down there? A. Yes, sir.

Q. You didn't go down there for any other purpose whatsoever?

A. Well, any more than probably looking at the timber in general.

Q. You are familiar with the tract known as the Rutherford Tract? A. Yes, sir.

Q. You have title to that in your own name now, haven't you? A. Yes, sir.

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

Q. And that was acquired in the early part of '43, was it not?

A. I think August, 1943—September, rather, 1943.

Q. Did you look at that tract when you were down there at the time that you went to look at the Phillips tract, and the [31] Lobster Creek Tract?

A. No, sir.

Q. When did you first look at that Rutherford Tract? A. In August.

Q. Who called your attention to the possibility of acquiring the Rutherford Tract?

A. Mr. Wilson.

Q. When did he direct your attention to that? It must have been before August of 1943.

A. No, it was not before August. It was either August or early September, I am not sure which.

Q. Now, prior to that time, and in April, 1943, did Mr. Wilson talk to you about building a mill in Oregon, about your building a mill in Oregon?

A. Well, there was—he always had ideas about building mills. Just when it was, I don't know. The conversation was that the people that were buying the timber that owned the mill there, that first when that was cut out, the timber was cut out, that if they bought any quantity of timber in Oregon, that they would move the mill.

Q. What mill?

A. The one known as Western Cross, a manufacturing company.

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

Q. That was an old, old mill, forty years old?

A. That is right—well, I wouldn't think so.

Q. How old was it then?

A. Probably the concrete foundation had been there for some time, [32] but it was a modern mill.

Q. Was it a modern mill in 1943? A. Yes.

Q. Well, you had large bodies of timber to cut in Washington, didn't you? A. No, sir.

Q. Are you still operating that mill?

A. Yes, sir.

Q. Been operating it continuously since?

A. Well, nearly so, yes.

Q. You required timber to operate the mill, did you not? A. Yes, sir.

Q. And you had timber with which to operate the mill?

A. At the time that we started looking for timber in Oregon, the supply of timber for the mill adjacent to the mill didn't look very good, and it wasn't much, and it figured then about two years' run; and there was some other timber acquired, and it is still running.

Q. Now then, was the acquisition of any mill over in Oregon discussed between you and Mrs. Wilson in April of 1943, was it discussed by you in April of 1943?

A. I don't think that early, but there was discussion about the mill.

Q. Was it in May, 1943?

A. I couldn't say. It was in the summer of 1943.

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

Q. It was the early part of the summer wasn't it? [33] A. I think so.

Q. And he then told you about the Port Orford Mill? A. Yes, sir.

Q. And did he tell you about what he thought about the financial condition of that mill at that time?

A. Well, the first thing that come up was talking about things relating to buying the mill.

Q. Well, what mill, the Port Orford Mill?

A. The Port Orford Mill.

Mr. Quinn: At this time, may it please the Court, with regard to these mills—maybe this line of testimony has a place in the case according to their pleadings. There is only involved here the purchase and resale of timber lands. We are not objecting to it at this time, because it may have certain bearing on the whole case. It is not to be considered as any part of a joint venture.

The Court: I understand that. Go on.

Q. (By Mr. Maloy): Have you the impression in mind, did he tell you that about the financing of the company that owned the Port Orford Mill?

A. That was discussed later. Only I don't remember just when.

Q. How much later?

A. Well, I couldn't say.

Q. Was it discussed in the summer of 1943?

A. I think so.

Q. And was there anything said between you

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

and Mr. Wilson [34] as to why there was any advantage in acquiring that mill?

A. Well, the whole setup was that we weren't timber people, and our only purpose was buying the timber to remanufacture. And Mr. Wilson said the more mills "you have and the more lumber you manufacture, the more timber I will be able to sell you."

Q. The more timber he would be able to sell you. Well, just explain that a little bit. What do you mean? If you had a mill, you could buy timber more easily if you had a mill in the locality?

Mr. Quinn: I think those questions are argumentative.

The Court: Well, he has asked him to explain something which I will permit.

The Witness: He bought the timber. His idea, as I gather, was to sell us the timber to manufacture into lumber in the mill.

Q. He was going to sell you the timber?

A. That was the point of where he was selling us the timber.

Q. Was there any particular timber discussed that he was going to sell you, at that time you were talking about the Port Orford Mill?

A. Not to my recollection—

Q. I see. Well, now then—

Mr. Quinn: Let him finish the answer.

A. —presumably, about the timber adjacent to the mill?

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

Q. Did he tell you that? A. No. [35]

Q. He didn't tell you that?

A. No, that is what I was looking at, to see what was available and it never was worked out satisfactorily. We never purchased the mill.

Q. Is that what he told you? Did he tell you that that was the purpose of acquiring the mill, so as to acquire more timber? A. Yes.

Q. That is what he told you? A. Yes.

Q. When did he tell you that?

A. I couldn't say.

Q. Was it in July of 1943?

A. I couldn't say. It was while this discussion was going on.

Q. Was it in June? 1943?

A. I couldn't say.

Q. Well, it was in the early spring or summer.

A. In the summer, I will say about the summer.

Q. All right now. Prior to August, 1943, did you have any discussion with him regarding tax title land in Curry County, Oregon?

A. When?

Q. I say prior to August, 1943, did you have any discussion with Mr. Wilson, at any time or any place, with regard to acquiring tax title timber land in Curry County, Oregon?

A. After the Phillips Tract and the Lobster Creek Tract fell through, while we were down there we understood that the county [36] was going to put up timber land for sale; so when these two

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

pieces of timber fell through—the Lobster Creek and the Phillips Tract fell through—we went down and investigated the county timber.

Q. Who went down?

A. Mr. Sherwood and myself.

Q. Did Mr. Wilson go down, too?

A. No, sir.

Q. Mr. Wilson advised you. I asked you a little while ago, did Mr. Wilson advise you at any time prior to August, 1943, in regard to the possibility of acquiring tax title timber in Curry County, Oregon?

A. He advised me not to have anything to do with any tax timber in the State of Oregon.

Q. And when did that discussion come up?

A. The first time that he mentioned the county timber.

Q. When was that?

A. I would think the latter part of July.

Q. 1943? A. Yes, sir.

Q. Then, you did discuss with Mr. Wilson, at that time, Curry County tax title timber?

A. Mr. Wilson——

Q. Answer the question please. Did he or didn't he——

Mr. Quinn: He can answer that in his own way.

Q. (By Mr. Maloy): So, you said a minute ago [37] Mr. Agnew, that Mr. Wilson told you to lay off and leave the tax title timber alone. Now

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

I am asking you; you did discuss with Mr. Wilson the Curry County tax title timber?

A. As to the extent of his advice to leave it alone.

Q. What were you talking about? Is that all you said between you?

A. Mr. Wilson came up and said, "I understand you are fussing around with the county timber." And he said, "My advice is to leave it alone, lay off of it."

Q. When was that now?

A. July. We had been working on it for quite some time.

Q. How long had you been working on it?

A. Oh, probably a month or six weeks.

Q. Then, you started in May to work on the tax title timber in Curry County?

A. I don't know when it was. I don't think that we really went down and started checking timber, the county timber, until after the Phillips and Lobster Creek deals fell through.

Q. Then, you say, that was in June. So, in June you started to check up on the Curry County tax title property? A. I think so.

Q. What did you do with regard to checking it up?

A. Went on the ground and looked it over and at the point of accessibility of it or the nonaccessibility.

Q. Where did you find the legal description of

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

the land that was subject to sale or that was going to be sold? [38]

A. We got a Mesger map showing the ownership and what belonged to the county.

Q. How did you know the county was going to offer any particular tract for sale at that time?

A. I wouldn't say that we knew, but we understood that they were going to sell, and that they were arranging to get the timber land on the tax roll, and that they were going to offer it for sale.

Q. Who told you that—that they were going to offer it for sale?

A. We found it out at the court house. I don't remember who it was.

Q. You don't remember what officer. Did you talk to the sheriff or the tax collector?

A. Yes, well——

Q. Mr. Sabin, did you talk to him?

A. I talked to him, but I don't remember when it was, whether it was that time or not.

Q. Did you talk with Miss or Mrs. Walker, the County Clerk, with regard to it at that time?

A. I don't think so.

Q. Did you talk to any of the county clerks?

A. The first thing that we did, we spent most of the time looking at the timber.

Q. How did you find out what timber to look at?

A. The Mesger shows what the county owns. [39]

Q. How did you know the county was going to

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

offer any tax townships or tracts of timber for sale, at that time?

A. Well, I don't know that we knew exactly what it was, only we understood that they were going to offer practically all their holdings.

Q. All the holdings that Curry County owned?

A. That was the understanding, for taxes.

Q. So you and Mr. Sherwood went and looked at all the county holdings?

A. I wouldn't say we looked at all, but we looked at an awful lot of them.

Q. Have you any record of survey or cruise or anything that you made of any of the timber?

A. We did some checking, we didn't cruise it, we checked it.

Q. Have you any report right now, here in the courtroom, on the timber that you looked at prior to August, 1943, showing what you found on these various tracts or grounds that you looked at?

A. I think we have. I don't know just where they are.

Q. Will you please produce them?

Mr. Quinn: I object to this; you made no demand on him.

Mr. Maloy: I didn't know they had them. Now he says that he has got them. Let's see them.

The Court: I think the answer was that he didn't know whether he had them and he didn't know where they were. [40] The Court can make no order to produce under those circumstances. If

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

you will develop it a little bit further, and it appears that there is something the Court can order him to do, I will order him.

The Witness: The main part of it was my personal observation.

Q. (By Mr. Maloy): Was it your personal observation that you are relying on?

A. By whom?

Q. By yourself or Mr. Sherwood or anything else, on this particular timber that you looked at, and that they were going to offer for sale.

A. We were looking it over. I wasn't mapping it or making up a list for anybody else. I was looking it up for ourselves.

Q. Have you got the legal descriptions of any of the timber that you looked at prior to August, 1943?

A. Sure we have got them—I would think we would have.

Q. Did you talk with the county commissioners about the sale coming up in August, 1943?

A. I talked to one of them, I think it was Judge Boyce.

Q. He is dead, isn't he? A. I believe so.

Q. Is there anybody else you talked to among the county commissioners or the clerks?

A. I don't think so.

Q. Did you talk to the tax collector, Mr. Sabin, or the sheriff [41] prior to August, 1943, and prior to the first sale?

Plaintiffs' Exhibit No. 4—(Continued)
(Testimony of Samuel A. Agnew.)

A. No, I don't believe I did.

Q. Did you talk to Mrs. Walker, the County Treasurer, prior to the first sale of August, 1943?

Mr. Buffington: I don't believe that counsel intends to be misleading, but Mrs. Walker is not the county treasurer.

Mr. Maloy: I beg your pardon. Did you talk to Mrs. Walker, the County Clerk?

A. Regarding the timber sale?

Q. Yes. A. No, I did not.

Q. At the August sale?

A. No, I did not. I think the first that I knew of the timber that was going to be offered for sale, or supposed to be, was along the middle or maybe towards the latter part of July. It was in the paper, listed in the paper.

Q. What paper?

A. I forget the name of it, I don't know.

Q. Was that the notice of sale?

A. It was the notice of sale. It didn't include all the timber, but it included part of it.

Q. And you never talked to Mr. Wilson about any of this tax title timber prior to the August sale, except that he told you to leave it alone?

A. No, I didn't say that.

Q. What did you say, then? [42]

A. I said that the first time I talked to Mr. Wilson, he advised me to leave any tax timber in Oregon alone. That is for some reason about a nine-

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

year plan or something, that it wasn't legal and it wasn't worth the paper it was written on.

Q. The nine-year plan has reference to the payment of a certain percentage down, doesn't it?

A. I don't know.

Q. And so much per year?

A. I don't know the particulars of it.

Q. Well, before you went to look at this tax title timber in Curry County that was coming up for sale in August, 1943, did you make any inquiry of any county official as to the terms upon which it could be bought? A. No, no.

Q. Did you make any inquiry of any county official prior to August, 1943, in regard to the price at which the county would sell this large amount of timber that you and Mr. Sherwood examined?

A. The records show that they'd been selling timber and land and it was sold by the acre at different prices.

Q. What records are you speaking of?

A. Well, the county records as I got it. I didn't examine them as to sales, but certain ones stated that they had bought.

Q. Who stated that to you?

A. There was different ones.

Q. Name somebody, will you, that stated that to you prior to [43] August of 1943?

A. One of them was at the Calgrove Ranch. I don't remember who it was—that they bought some

Plaintiffs' Exhibit No. 4—(Continued)
(Testimony of Samuel A. Agnew.)

county land. It seems to me like it was two or three dollars an acre.

Q. Was that timber land?

A. There was timber on it.

Q. Was it sold as timber land?

A. I couldn't say about that. I don't know as there was any distinction between timber land and brush, as far as I know.

Q. Did you make any inquiry of anybody prior to August, 1943? A. I done the most——

Q. As to whether it was timber land or not?

A. I done most of the investigating myself.

Q. Well, all right. Now, what other investigation did you make of the county timber land that was being offered or was going to come up for sale on August, 1943, other than that that you have described?

A. Well, that was all—in other words, we looked at enough so that we were satisfied that it was worth going into.

Q. How many acres did you look at?

A. I don't know. When you talk about looking at acres, you go across a section and make a run or two across it. You don't see it all; so when you ask what I looked at, that is indefinite.

Q. How many acres were going to be offered for sale?

A. I think around thirty-one or thirty-two thousand acres.

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

Q. Did you look at all of the thirty-one or thirty-two thousand [44] acres?

A. Well, I looked at enough of it so that I was satisfied that if it was sold right that we were interested.

Q. Now, I want to go back to the conference you had with Mr. Wilson when he told you first to not have anything to do with the Curry County tax land. What else was discussed besides the fact that he told you not to have anything to do with it?

A. He said, "Lay off of that and I will sell you some timber that you can make some money on." He said, "Stay away from the Curry County brush."

Q. That was all the discussion that you had with regard to Curry County tax land? A. No.

Q. What is the rest of it?

A. I met him again.

Q. I mean in this first conversation when he told you to lay off the Curry County tax land. What else, other than that, was discussed?

A. I didn't discuss the Curry County tax land with him.

Q. You didn't?

A. No, any more than that.

Q. Did you inquire as to the possibility of acquiring Curry County tax land, the first discussion you had with him? A. From him?

Q. Yes.

A. No, he was opposed to it, to having anything

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

to do. He [45] didn't want anything to do with it and told me so.

Q. That ended the discussion? That was all you talked about in that discussion?

A. I don't know whether that was all or not, that is that I remember.

Q. That is all you remember of the first discussion? A. Yes.

Q. Well, now then, were you at the first sale in August, 1943, at Gold Beach, when some tax title timber was offered for sale?

A. I was there. I didn't go in. I was crippled up at the time.

Q. You didn't attend the sale?

A. Not that time, not that particular sale.

Q. You didn't attend the sale? A. No.

Q. Did you have any discussion with Mr. Wilson regarding the bidding at the first sale in August, 1943, of the Curry County tax lands?

A. Yes.

Q. You say, "yes." Where was the conversation?

A. Well, I don't remember just where it was.

Q. Was it in Centralia or Gold Beach?

A. In Gold Beach.

Q. It was in Gold Beach? A. Yes, sir.

Q. Where in Gold Beach?

A. I don't know about that. I couldn't say just where it was. [46]

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

Q. What discussion did you have with Mr. Wilson about the first sale of 1943 in regard to the bidding at that sale of Curry County tax land?

A. I gave Mr. Sherwood a signed check in blank. We didn't know how much it would come to. Mr. Sherwood was going to bid on the timber. Mr. Wilson stated that he was going to open brokerage office in Gold Beach, and he would like to bid the timber in. It wouldn't make any difference.

Q. He would like to do what?

A. Bid the timber in for us.

Q. And why? Did he state why?

A. Yes. He said that he was going to open a timber office in Gold Beach, and it would give him prestige, and he would like to do it.

Q. Now, this conversation that you had at Gold Beach with Mr. Wilson, and the one in which he told you to lay off the timber, was it the first time you had a conversation with him regarding the Curry County tax sale in August, 1943?

A. I don't know. The first time that Mr. Wilson came to me, he said, "I understand you are working on the Curry County timber," and, as I said, he advised me against having anything to do with it. He tried to discourage that, and said that he would like to sell us timber that we could make money on, and that it was good timber, that the Curry County tax timber was not good timber or it wouldn't have gone for taxes.

Q. Now, the next conversation was the one in

Plaintiffs' Exhibit No. 4—(Continued)
(Testimony of Samuel A. Agnew.)

which he came to [47] you in Gold Beach, and asked for the privilege of bidding it for you?

A. No.

Q. What other conversations did you have with Mr. Wilson in the meantime?

A. The next time I met him there he said, "You are bound on going ahead with it, are you?" And I said, "Yes, we are going to bid on it." And he said, "Well, if you are stubborn enough to do it, I'd like to help you. I am not doing anything, and I would like to get started." And I said, "Well, I don't see where that enters into it," because on the Phillips tract and on the Lobster Creek tract I told him that any timber we wanted to know just what it was going to cost us. And he said that it would be clear and above everything, and I said, "Clear of everything?" and he said, "Yes, I will get my cut from the seller." I said, "Well, on the county stuff, there isn't going to be any cut because the county is not going to give any cut, and we certainly are not."

Q. And so then, he asked the privilege of buying it in for the purpose of getting the prestige in Gold Beach, is that right?

A. I made the statement that we had lost out on the first two tracts that come up, that, as I said it, unless our people got the county timber or could get a substantial amount of it, they weren't going to buy in Oregon. And when I told him that the county wouldn't pay a cut and we wouldn't, he said,

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

“Well, I’ll get mine in other ways. You made the statement that you [48] are not going to buy unless you buy the county stuff” and he said, “That will give you a nucleus, and I will fill in to complete the operation. That will give me a chance to sell you other timber to complete the setup.”

Q. Now, you knew that he had been in the timber business in Oregon for a good many months, didn’t you, at that time, Mr. Agnew?

A. Well, I have told you what I knew.

The Court: I think, counsel, that this is a good point to recess. We will recess until two o’clock.

(Thereupon, the noon recess was taken at twelve noon until two o’clock p.m.) [49]

November 10, 1949—2:00 P.M.

The Court: You may proceed.

Cross-Examination

(Continued)

By Mr. Maloy:

Q. Mr. Agnew, you stated before the noon recess that you learned of the description of the Curry County tax lands that were to be sold in the early part of August, 1943, from a newspaper advertisement. How did you happen to get that newspaper? Did you subscribe to the Gold Beach newspaper?

A. Yes.

Plaintiffs' Exhibit No. 4—(Continued)
(Testimony of Samuel A. Agnew.)

Q. You are a subscriber to the Gold Beach paper, you were at that time?

A. I don't know whether I was at that time or not.

Q. I am asking you were you or were you not?

A. I don't remember.

Q. How did you come into possession of the newspaper which advertised that land for sale?

A. Well, it was general knowledge.

Q. I am asking you, how did you come into possession of it? A. Well, that I couldn't say.

Q. You don't remember?

A. I don't know whether Mr. McCutcheon had checked on it and had some figures on it and the list. In fact he had the marks on a map of what was coming up, a county map.

Q. Then, before it was marked on the map, he looked at the map, was it before or afterwards that he looked at the land? [50]

A. When we first looked at the land, I didn't know what was coming up for sale. I looked over and checked as near as I could the county lands that were proposed to be timber.

Q. In other words, you looked over all of the Curry County land, owned by Curry County?

A. No.

Q. That was supposed to be timber land?

A. Well, I wouldn't say all of them, but the first that I got on the check—I first got the check on the county land which was about sixty-two thousand

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

acres, but of that portion, I didn't know what was going to be put up, but I understood that it would be about half, and there would be some of the beach and grazing land that wasn't going to be sold at that time.

Q. Who did you learn that from?

A. These, of the thirty-two thousand acres I got from Mr. McCutcheon, the sixty-two thousand acres.

Q. When did you get those?

A. I think that was along the early part of July. I don't remember when, but I would say in July.

Q. Did you know what price they were going to be offered at?

A. Well, I don't think I did, but I had a number of figures on what the land had been selling for, and I assumed that it would probably be somewhere around five dollars.

Q. Did you understand that all of the county timber land was going to be sold?

A. No. I didn't understand that it was all going to be sold. [51] I think the first advertisement in the paper I think there was one township left out that was sold. It wasn't in the preliminary form.

Q. Do you know how Curry County tax lands are put up for sale or how it comes about that they are put up for sale?

A. As I understand it, the way they were going to do it was that the board had decided that they wanted to get more land on the tax roll, and they

Plaintiffs' Exhibit No. 4—(Continued)
(Testimony of Samuel A. Agnew.)

were going to pick out certain land. I didn't know what land it was going to be.

Q. Did you know that it was customary for someone to apply to the County Board put that land up for sale?

Mr. Quinn: I object to that. You are asking a question now on a matter of legal procedure. Those are probably not in the knowledge of the ordinary layman.

The Court: I think the question calls for his understanding, Mr. Quinn, not as to whether or not that was the proper procedure, but what his understanding was.

The Witness: As far as the advertisement was concerned and the ad in the paper, we had gone into it quite some time before that come out; so how it is connected with that or the matters it covered I couldn't say.

Q. You said, "we." Who do you mean by "we"?

A. Mr. Sherwood and Mr. McCutcheon and Mr. Troxel.

Q. And had they gone and talked to the County——

Mr. Buffington: I am not sure he finished his statement.

Mr. Maloy: We will pass along to another one. [52] Mr. McCutcheon and Mr. Troxel and Mr. Sherwood, had they talked to the county authorities with regard to the putting up of the land for sale?

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

A. I think Mr. McCutcheon had, but I am not sure.

Q. Had he applied to the county board to have these lands put up for sale?

A. Not that I know of.

Q. He hadn't reported to you that he had applied had he?

Mr. Quinn: Just a moment. I think you are going too far on that line of what somebody else might have done or what he has knowledge of, or whether it is necessary for them to apply.

The Court: I think it is permissible. I will permit it.

Q. (By Mr. Maloy, continuing): Now, do you know the basis on which the county tax lands in Curry County in 1943 were put up for sale? The manner in which the purchase price was to be paid?

Mr. Quinn: I think your question is ambiguous—the basis on which it was to be put up—you might ask him the method by which it was put up.

Q. (By Mr. Maloy): Do you know, in the event you bid for Curry County tax land in August, 1943, as to the manner in which the purchaser paid for the land?

A. It was to be appraised at a price of so much per acre, and it was to be sold, I think, at twenty per cent down accompanying the bid; and there was an extension of time, I don't remember [53] just what it was.

Plaintiffs' Exhibit No. 4—(Continued)
(Testimony of Samuel A. Agnew.)

Q. You had the right to pay for the balance in eight installments?

A. I don't remember, but there was time on it.

Q. Did you consult anyone in Gold Beach, such as an attorney or anyone like that, with regard to the procedure or the legality of the sale of the timber lands? Did you consult anyone with legal authority as to the possible validity or lack of it of the Curry County tax lands for sale in August, 1943, or before that?

A. Well, there was Mr. Wilson—his version of it was that the tax title to land in Oregon wasn't good. And Mr. Kendall, I think he was the next judge, he was in Gold Beach and also in Port Orford; and one of the times that I met him I asked him his opinion on the legality and if he thought the county had the right, and his advice was that he thought it was all right, and that anyway the title could be cleared up by means of advertising.

Q. When did you first meet Judge Kendall?

A. It was in August.

Q. Of 1943? A. Yes.

Q. And where did you meet him?

A. Well, I met him once at Port Orford and once at Gold Beach.

Q. Where did you meet him first, in August of 1943? A. That I couldn't say. [54]

Q. Was it before or after the sale that was called for August, 1943?

A. Sir, there—it was between the two sales.

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

Q. You didn't meet him before the first sale in the early part of 1943? A. I don't think so.

Q. Did you attend the first sale in 1943?

A. I was there, but not in the room.

Q. You were not present at the sale?

A. No, no.

Q. Who introduced you to Judge Kendall in August, 1943? A. Mr. Wilson.

Q. How did it happen, if you know, that Judge Kendall happened to be in Gold Beach in 1943?

A. I don't know.

Q. Do you know why he was there?

A. No, I do not.

Q. Do you know whether or not Mr. Wilson secured his presence there at the first sale in August, 1943?

A. Well, later Mr. Wilson, they had some meeting it seems between the two sales, after the first sale; and Mr. Wilson stated that he had Judge Kendall there.

Q. Judge Kendall was there at the first sale, wasn't he, Mr. Agnew? A. I don't know.

Q. Didn't you meet Judge Kendall at Gold Beach at the time of [55] the first sale that was called off in August, 1943?

A. I don't believe I met him until after the first sale.

Q. The first sale was called off?

A. Yes, sir.

Q. Why was it called off? Do you know?

Plaintiffs' Exhibit No. 4—(Continued)
(Testimony of Samuel A. Agnew.)

Mr. Quinn: That is going into statutory action. There may have been many reasons for calling it off.

The Court: It just calls for his knowledge of what the reason was. What the reason was is immaterial. His knowledge is what is important. I will overrule the objection.

The Witness (Continuing): My understanding was that it was not properly advertised.

Q. (By Mr. Maloy, continuing): Did Judge Kendall tell you that? A. No.

Q. Who told you that?

A. Well, I don't know.

Q. Did Mr. Buffington tell you that?

A. I don't remember who told me, because it was in the paper——

Q. Do you know who it was that caused the first sale to be called off, the one in August of 1943?

Mr. Buffington: If your Honor please, the witness hasn't finished the last answer. He said it was called off back there and then counsel interrupted with another question.

The Witness (Continuing): I don't know who caused it to be called off, but I understand that Mr. Buffington made some [56] objections, and it had been recommended that they readvertise.

Q. (By Mr. Maloy): Do you know whether or not Mr. Wilson and Mr. Buffington had been having some trouble about Mr. Buffington having objected

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

to the manner in which the sale in August, 1943, was being handled?

A. Mr. Buffington and Mr. Wilson had trouble at different times, I think, over the Port Orford mill and over the sale.

Q. I am talking about the sale of August, 1943, Mr. Agnew. Did they have trouble about that that you know of?

Mr. Quinn: Just a moment. I don't think that is proper cross-examination, unless they can show that Mr. Buffington represented this party.

The Court: I think that line of questioning goes to his knowledge, which I think is of some importance.

The Witness: Well, Mr. Wilson said that Mr. Buffington was trying to block the sale.

Q. (By Mr. Maloy): When did Mr. Wilson tell you that?

A. I don't remember. It was after this——

Q. He didn't tell you that——

Mr. Buffington: He was still answering the question. I think counsel should be cautioned that this witness speaks deliberately.

Mr. Maloy: I can't tell when he is through.

The Witness: My English is not very good, Mr. Maloy.

The Court: Let me say that if the question is asked [57] and you have not finished with your last answer, continue with your answer, or indicate that you have something more to say.

Plaintiffs' Exhibit No. 4—(Continued)
(Testimony of Samuel A. Agnew.)

Mr. Buffington: We seek to give him the opportunity which he should have.

The Court: I have just instructed Mr. Agnew that if he has not completed the answer to keep on with his answer—either that or indicate that he is not finished; whereupon we will strike the question of counsel and let him continue with his answer. Mr. Agnew, you are going to be given the opportunity to answer the questions as fully as you want to.

Q. (By Mr. Maloy): Did Mr. Wilson advise you that he was endeavoring to block the sale, that Mr. Buffington was endeavoring to block the sale, before the sale in August took place?

A. That I don't know. Not that I know of, sir. Mr. Wilson said, I think he gave Mr. Buffington credit for blocking the sale.

Q. And he said nothing to you about Mr. Buffington endeavoring to block the sale before the sale took place? A. Not to my knowledge.

Q. Did you know that Mr. Wilson had gotten Judge Kendall to come down to Portland before the sale?

A. I didn't know that until I saw Judge Kendall, after they introduced me to him.

Q. Now then, did Mr. Wilson bid for you at the first sale? When I say the first sale, I refer to the one in August, 1943. [58]

A. I couldn't say for certain whether there was any bids really made or not at the first sale.

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

Q. You authorized him to bid for you, though, didn't you?

A. He asked to bid, and I told him I had no objections.

Q. And did you furnish him with any money with which to bid at the first sale?

A. I stated this morning that Mr. Sherwood had a signed check that was not filled in, and who held that check during the sale, I don't know.

Q. Was it your personal check, in blank?

A. You mean a personal check?

Q. Yes. A. A company check.

Q. In blank? A. Yes.

Q. Did you know at that time that in these county sales for taxes these county authorities were conducting the sale and required a certified check or draft or cashier's check?

A. Well, I had been told that they would recognize my check.

Q. Who told you that? A. I don't know.

Q. Was any money put up by anyone in support of the bid that was made by Mr. Wilson at that sale?

A. That, I couldn't say. If it did, it came back.

Q. Did Mr. Wilson put up any money of his own at that first sale?

A. Not that I know of. [59]

Q. You don't know if he put up some fifty-six hundred and eighty-five dollars on the first payment, on the first sale?

Plaintiffs' Exhibit No. 4—(Continued)
(Testimony of Samuel A. Agnew.)

A. I didn't know that Mr. Wilson ever put up any personal money on any of the timber.

Q. He never advised you of the fact that he had on that first sale? A. No.

Q. When you discussed the first sale being called off with Judge Kendall, have you any way of fixing the time and place of that conversation as to who was present? A. No, I haven't.

Q. Was Mr. Wilson present when you discussed it with Judge Kendall?

A. That I couldn't say.

Q. Do you know who Mr. Buffington was representing at the first sale?

A. Well, he was representing Mr. Netet, and I don't remember whether it was the first sale or both sales.

Q. He did represent at the second sale, the one in September, 1943? A. Yes, sir.

Q. In the conversation that you had with Judge Kendall, after the sale in August which didn't materialize, did you have any discussion with Judge Kendall as to whether he was going to take any part in arranging for the later sale at some later date? [60]

A. No, there wasn't much of a discussion on my part with Judge Kendall. I did ask him about the legality question. [61]

Q. And what did he tell you about the legality of the sale that might come up in September, 1943?

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

A. I don't think I asked him anything further.

Q. Did he advise you that he and Mr. Buffington and the District Attorney had been conferring together with reference to bringing about a valid sale of this tax title timber in Curry County, Oregon?

A. Not to my knowledge.

Q. Well, not to your knowledge—what do you mean by that?

A. I don't remember.

Q. You don't remember?

A. No.

Q. Now, there was a second sale, to wit, in September, 1943, was there not?

A. Yes, sir.

Q. Did you attend that sale?

A. Yes, sir.

Q. Now, going back to the sale in August of 1943, I would like to ask you, Mr. Agnew, whether you gave Mr. Wilson any specific instructions as to how much he should bid per acre for any particular tract that was being put up for sale?

A. So far as we were concerned, we had decided to bid the appraised value.

Q. The appraised value. Was this land appraised before it was put up for sale?

A. They put a price on it. Some of it was as low as two dollars [62] an acre, some of it was five dollars an acre. That was the appraisal.

Q. Then you gave him instructions to bid the minimum price that the county authorities fixed on the various types of land that was being sold?

A. Yes, sir.

Q. Did you give any instructions as to any spe-

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

cific tract that he was supposed to bid on at the first sale? A. Yes.

Q. What particular tract?

A. When it came up—I was there, and some of it came up that we didn't want, and then I shook my head "no," and if he was to bid on it, I nodded "yes."

Q. And that was the way the bidding was conducted at the first sale, was it? A. No.

Q. What is that?

A. I understood you to say "the first sale." No, I wasn't in there at all.

Q. Well, did you give Mr. Wilson any specific instructions as to what particular tract or tracts of timber he was supposed to bid upon for you at the first sale?

A. As I remember it, at the first sale we had decided to take what they called the Hunter Creek, I believe it was Township 37. And further than that I don't remember. In fact, I didn't pay very much attention to it because I didn't think that the first [63] sale was going through.

Q. Why didn't you think the first sale was going through?

A. Well, the question had come up about it not being properly advertised, and I knew there was considerable opposition, and I didn't think the board——

Q. (Interposing): How did you learn that—of that, Mr. Agnew?

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

A. Well, I couldn't say how.

Q. Had you learned of it before the first sale? You did, did you not?

A. Well, it was right at the sale, I would say. About that time. I just——

Q. (Interposing): Well, the reason I am asking you, Mr. Agnew, is that awhile ago you said you didn't learn of the probability of that sale being invalid until after the sale. Now, which was it, after or before? A. Well——

Mr. Quinn (Interposing): Pardon me. I believe you are misquoting the witness. I ask you to refer back to the record.

Q. (By Mr. Maloy, continuing): You stated a while ago that you didn't learn about the legality of the first sale in August, 1943, until after the sale. Now, I am asking, was it after the sale that you learned that fact or before the sale?

Mr. Quinn: Well, I am objecting to his statement again because he didn't make any such.

The Court: He stated that that was Mr. [64] Agnew's statement, and, as I understand it, he is asking Mr. Agnew if that is true. (To witness): You may answer it.

A. As far as the legality or Mr. Kendall's advice on the legality, that had nothing to do with the bidding so far as we were concerned.

Mr. Quinn: I move to strike that as not responsive to the question.

The Court: That answer may be stricken.

Plaintiffs' Exhibit No. 4—(Continued)
(Testimony of Samuel A. Agnew.)

Q. (By Mr. Maloy, continuing): What I am asking you, Mr. Agnew, is whether it would be—whether it was before the first sale in August, 1943, were you advised that there was a question as to whether the sale—such a sale would be valid? Is that clear? A. The first?

Q. The first sale. The first sale in 1943, that sale. A. Whether that sale would be valid?

Q. Whether you knew it before the sale or afterwards?

A. I wouldn't say I ever knew it. I only had my opinion.

Q. Did you have your opinion before or after the sale that the sale would not go through?

A. Well, it was when it came up and I realized or understood about the opposition that was against it.

Q. When did you learn that, before or after the sale?

A. Well, I was—that is, I—my opinion was before the sale that it wouldn't go through. But I wanted to be prepared so we gave Mr. Sherwood the [65] check.

Q. That is the check in blank that you spoke of?

A. Yes.

Q. And then it was before the sale of August, 1943, that you were of the opinion that that sale wouldn't go through because it was invalid, is that correct?

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

A. Well, I didn't know whether it was invalid or on account of the opposition.

Q. Well, then, put it that way. On account of it being invalid or the opposition, you were advised or believed that it wasn't going through before the sale?

A. I don't think I was advised. I wasn't advised; it was only my own opinion.

Q. Well, now, what caused you to form that opinion, then, Mr. Agnew?

A. Well, there was opposition against it, and from what I had understood it was probable that it hadn't been properly advertised.

Q. Where did you get that understanding before the sale?

A. Well, I formed my own—you mean, someone told me or something?

Q. Well, where did you get the information from when you formed the opinion that the sale wouldn't go through on account of opposition or any other reason?

A. I don't remember where I got the information.

Q. But you got that information before the sale took place, whatever it was?

A. There was a question about it going through? Is that it? [66]

Q. Yes. A. Yes, sir.

Q. That was what I wanted to get at. Now, this

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

blank check that you gave to Mr. Sherwood, you first got that check back?

A. Well, I would assume so.

Q. And when you got it back, had it been filled out in any particular sum?

A. That I couldn't say.

Q. You, then, of course, I assume, destroyed it or canceled it? A. I think so.

Q. Now, were there any other tracts than what you call the Hunter Creek tract that you instructed Mr. Wilson to bid on at the first sale that were being offered at that first sale?

A. I couldn't say on that.

Q. Well, you didn't have anything to do personally with the arranging of that first sale in August, 1943, with county court or county commissioners, did you? A. No, I did not.

Q. And did anybody else on your behalf make the arrangement for that sale—of that Hunter tract at that sale in 1943?

Mr. Quinn: We are going to object to that because obviously it was the duty of the county commissioners up there to perform those functions, and they made the arrangement, not the individual.

The Court: We will ask the reporter to read the question. [67]

(Last question read by the reporter.)

The Court: In that form, I will sustain the objection.

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

Q. (By Mr. Maloy): Did anybody to your knowledge, representing you, Mr. Agnew, approach the county court or county commissioners and make an application for the sale of Hunter Creek tract at this sale of August, 1943?

A. I do not know of any.

Q. Do you know, Mr. Agnew, whether or not Judge Kendall, the attorney you have spoken of here, had anything to do in arranging or applying for the sale of tax title timber in Curry County at the second sale which took place in September, 1943?

A. I don't know.

Q. When you and Mr. Wilson and Judge Kendall discussed the matter, were there any conversations between you regarding the second sale?

A. Mr. Wilson and Judge Kendall and myself didn't discuss the sale.

Q. What did you and Judge Kendall and Mr. Wilson discuss then in your conversation you spoke of shortly after the first sale?

A. I asked Judge Kendall if, in his opinion, the county had the right to sell so that it would carry good title to the land taken over by the county for taxes. It wasn't regarding the sales.

Q. And it wasn't regarding the procedure that had been adopted by the county court in putting the land up for sale? That wasn't discussed at all? [68]

A. No.

Q. You mentioned having had another discussion with Judge Kendall at Port Orford. When did

Plaintiffs' Exhibit No. 4—(Continued)
(Testimony of Samuel A. Agnew.)

that conversation take place and in whose presence?

A. I don't remember. I don't remember when it was. But that, as I remember it—about the only thing that I do remember was that he was speaking about the lake there at Port Orford and the fishing and so forth. I don't think that at that time it come up regarding any business.

Q. Well, when was this conversation at Port Orford, Mr. Agnew?

A. I couldn't say when that was.

Q. Was it in the month of September, 1943?

A. I wasn't—I wouldn't think so. I would think it was probably in August.

Q. Probably in August. Do you know whether or not Judge Kendall was there at the second conversation in September of 1943?

A. Yes, he was there.

Q. Was Mr. Wilson there? A. Yes.

Q. Do you know whether or not Judge Kendall and Mr. Wilson had been in any conversations with the county clerk relating to the second sale prior to it? A. I do not know.

Q. You had no conversations with Mr. Wilson with regard to it in the meantime? [69]

A. I wouldn't know about conversations. I wouldn't know, but—I don't know.

Q. Were you there in Gold Beach all the time between the time of the first sale which was in early August of 1943 and the time of the second sale which was early in September of 1943?

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

A. No, sir.

Q. Were you present at the second sale in September of 1943? A. Yes, sir.

Q. Was Mr. Wilson present at the second sale in September of 1943? A. Yes, sir.

Q. And did Mr. Wilson bid for you at the second sale in September of 1943? A. Yes, sir.

Q. Do you—did you have any conversation with him in regard to his bidding at that sale, bidding in this Hunter Creek tract of timber at the second sale?

A. Well, I think that covered all that was bid on.

Q. You mean, the first conversation you had before the first sale in August, 1943, covered your arrangements for his bidding at the second sale?

A. No, I mean at the time of the second.

Q. At the time of the sale? A. Yes, sir.

Q. Well, you mean right at the time of the sale you had your next conversation with Mr. Wilson regarding bidding? [70]

A. Next conversation?

Q. Yes.

A. I wouldn't say about that. I don't know whether it was the next time one or what it was as far as that goes.

Q. Well, had you had any previous conversations in the meantime between the first sale and the second sale? A. Yes.

Q. How many times do you suppose you talked with him about the second sale?

Plaintiffs' Exhibit No. 4—(Continued)
(Testimony of Samuel A. Agnew.)

A. I don't know.

Q. He was up at Centralia and saw you during that period, hadn't he?

A. I don't remember him being in Centralia during that period.

Q. By the way, how many times had he been in Centralia seeing you in April, May and June of 1943?

A. I don't remember.

Q. Half a dozen times?

A. I wouldn't say that many. I don't know. He was going through quite often.

Q. He was up there quite frequently, wasn't he, talking to you about these various matters?

A. No, he was not. The trips were on the Phillips and Lobster Creek—and then I don't remember him being there until after we started buying, starting with the Rutherford piece and from then on.

Q. Well, you say he was up there though between August, the [71] time of the first sale and September, the time of the second sale?

A. I didn't say that.

Q. Well, I understood you to say that. Was he or wasn't he?

A. I don't think so.

Q. Well, then, when did you return next to Gold Beach after the first sale fell through?

A. I don't remember when we left or when we returned.

Q. You did return though for the second sale?

A. Yes.

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

Q. And did you have any conversation with Mr. Wilson relating to the conduct of the second sale before the sale took place? A. Yes.

Q. Well, when was it, and where, and who was present? A. Oh, I couldn't say that.

Q. What is that?

A. I couldn't say. I don't remember.

Q. Was there any specific instruction given by you to Mr. Wilson regarding the bidding at the second sale?

A. Well, to decide on the land that was to be bid on, and I stood there and when a piece come up that we wanted I nodded for Mr. Wilson to go ahead.

Q. Well, now, was there any additional timber come up over and above the Hunter Creek tract?

A. Oh, yes.

Q. And did you bid on it at the second [72] sale?

A. You mean, did I bid or did Mr. Wilson?

Q. Well, did Mr. Wilson bid for you?

A. Yes.

Q. How much additional timber other than the Hunter Creek tract did you instruct Mr. Wilson to bid on at the second sale?

A. Well, the Hunter Creek tract, as I remember it, had about around, I would say, between five and six thousand acres, and I think we bid in around twenty-eight thousand acres, if that answers the question.

Plaintiffs' Exhibit No. 4—(Continued)
(Testimony of Samuel A. Agnew.)

Q. I think so. And was any price fixed at which you would bid for all of this timber, the total of some thirty-five thousand acres or such a matter?

A. The price set out by the board.

Q. That is the minimum prices? A. Yes.

Q. And—I don't recall—when did you say you had this conversation with Mr. Wilson regarding the bids and amount of timber that he should bid on? When? Before the sale?

A. Well, I think that was just when it came up. That was governed right at the sale, at the time of the sale.

Q. You had no previous conversations before the sale?

A. They put up some pieces—say it was on the beach or something—that we didn't want, that was isolated from the rest of it and when I didn't want it——

Q. (Interposing): You mean that was all handled right at the sale? [73]

A. That is as I remember it.

Q. He did the bidding, didn't he?

A. Yes, I think he did all the bidding.

Q. Were there any other bidders at that sale other than Mr. Wilson bidding for you?

A. Yes.

Q. Who else?

A. Mr. Nettleton, and I think there were some other bidders that——

Mr. Quinn (Interposing): Just a minute. Do

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

you understand that question? I think the question was, "Was there any other bidder at the sale bidding for you." I don't think you intended to answer that question.

Mr. Maloy: I said, "other than Mr. Wilson bidding for you."

Q. You said Mr. Nettleton?

A. I think there were other bidders there.

Q. Was Mr. Nettleton there in person?

A. I don't remember whether Mr. Nettleton was there, or Mr. Buffington bidding for Mr. Nettleton.

Q. Mr. Buffington was there bidding at that sale also, was he? A. I think so.

Q. Well, how much land did—or, I will put it this way: How much land was acquired from Curry County upon the bids made by Mr. Wilson at the second sale?

A. Well, I think about twenty-eight thousand acres. [74]

Q. Twenty-eight thousand acres. And did Mr. Wilson put up any money on that purchase of his own? A. Not that I know of.

Q. Did you deal with the authorities yourself in paying for that timber that was bid in at that sale?

A. As I remember it there were drafts aggregating around forty thousand dollars made out to Mrs. Walker, and just how it was handled, I don't know. I think those were put there and the bids were charged against that.

Q. Well, did you deliver that forty thousand-

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

dollar draft, or was it a cashier's check, to Mrs. Walker?

A. I don't remember. I think I gave that to Mr. Wilson.

Q. You think you gave that to Mr. Wilson? That draft or cashier's check was then delivered by Mr. Wilson to Mrs. Walker, was it not?

A. Well, just how that was handled, I don't know.

Q. Well, you got back the canceled check or draft showing Mrs. Walker's endorsement on it, didn't you?

Mr. Quinn: We have the draft here if you want it.

Mr. Maloy: Well, he ought to know.

Mr. Quinn: I have the draft on it. He ought to be shown the draft.

Q. (By Mr. Maloy): Was it all in one draft or were there a number of drafts?

A. Well, to start with I think it was one draft for forty thousand dollars, and I think it was broken down into eight [75] five thousand-dollar drafts.

Q. Now, did you have any dealings with Mrs. Walker or anyone else of the Curry County regarding the making out of any deeds or contracts covering this purchase made at the second sale of September, 1943?

A. No; on the details, I did not.

Q. Who handled that? A. Mr. Wilson.

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

Q. And I will ask you if it isn't a fact, Mr. Agnew, that Mr. Wilson arranged for allocating a certain portion of the purchase price so that you could acquire complete title to Section 36 which was bid upon at that first sale—I mean, the second sale of September, 1943?

Mr. Quinn: Will you kindly read that question over again?

(Last question read by the reporter.)

A. The way it started out it was to be twenty per cent of the purchase price was to be paid at the time of the sale before the papers were made out. Mr. Wilson said that the Evans Product Company wanted to trade fir for the Port Orford timber, Port Orford cedar timber.

Q. (By Mr. Maloy): And, so, did Mr. Wilson cause the county authorities to issue or make and execute a deed to the Section 36 which had this Port Orford cedar upon it?

A. It wasn't a deed. It wasn't—it didn't take the property. It was just the timber, just the cedar timber. [76]

Q. You mean that was just the cedar timber that was traded to the Evans Product Company?

A. Traded to the Evans Product Company.

Q. Well, but the deed was executed and delivered by the county authorities to Mr. Wilson as trustee?

Plaintiffs' Exhibit No. 4—(Continued)
(Testimony of Samuel A. Agnew.)

A. Yes, sir; I didn't know that until later; why it was done. I have never been able to find out.

Q. Mr. Wilson handled the transaction?

A. Yes.

Q. You had nothing to do with that whatsoever?

A. That is right. I didn't know about it.

Q. And that particular piece of timber, that was taken in Mr. Wilson's name as trustee, was that paid for in full?

A. It was paid for, the whole township thirty-seven was paid for in full. That had to be paid for in order to release it to make the trade. The county couldn't let us trade the timber until the whole thing was paid for; so, instead of twenty per cent, Township 37 was paid for a hundred per cent, twenty-eight thousand some hundred dollars. And Section 36 was in that.

Q. And Mr. Wilson arranged that?

A. Yes, I imagine so. We had to do it in order to trade the cedar.

Q. In other words, you had to have a good title before you could make a deal with the Evans Product Company? A. That is right. [77]

Q. And did you know about that, that it was necessary to have the title in that manner at the time? A. Yes, I knew it.

Q. Now, I want to ask you this—

A. (Interrupting): I knew that it had to be paid for. That is what I mean. I knew that the land had to be paid for before we could make the deal.

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

Q. You knew that at or about the time of the sale of September of 1943? A. Yes, sir.

Q. Now, were there any other tax title purchases in Curry County, Oregon, after this one in September, 1943? A. Yes, I think there were.

Q. And, by the way, before I forget it, the full consideration for these tax lands that were purchased in the sale of September of '43 were finally paid out in full, were they not? A. Yes, sir.

Q. And did you get a deed?

A. From the county, yes.

Q. In your name? A. Yes, sir.

Q. And you still have it in your name, haven't you? A. Yes, sir.

Q. All right. Now, then, what other Curry County tax lands were purchased by you in Curry County, after the sale of September, 1943? [78]

A. Why, I couldn't say just what they were. Mr. Sherwood and Mr. McCutcheon, they checked over it. I don't know how much but portions of the remaining timber owned by the county. It was recommended the purchase of certain portions of it. Just what they were, I don't know.

Q. Well, how many additional purchases were there of Curry County tax land, after the one of September? A. I don't know.

Q. Who handled the transactions with the county, the purchase of the tax title timber?

A. Well, Mr. Sherwood and Mr. McCutcheon was the ones that picked them out and recom-

Plaintiffs' Exhibit No. 4—(Continued)
(Testimony of Samuel A. Agnew.)

mended the purchase of them. And I think Mr. Wilson purchased them for us.

Q. And the title to those were also taken in your name? A. Yes, sir.

Q. You didn't have anything to do with any of those transactions?

A. In what way do you mean?

Q. I mean, you didn't bid the land from the county, nor you didn't pay the consideration personally, yourself?

A. No, not hand it over; no, I did not.

Q. Mr. Wilson took care of all of that?

A. I would say he took care of most of it. He handled that part of it.

Q. Do you know, Mr. Agnew, who made the application to the county to purchase these additional tracts of county tax land? [79] A. I do not.

Q. Now, going back to the Port Orford Mill.

Mr. Quinn: I wonder if we could have a little recess?

The Court: Very well, we will take a ten-minute recess, and we will run enough longer to make that up.

(Thereupon, a short recess was had at 3:10 p.m.)

The Court: You may proceed, counsel.

Q. (By Mr. Maloy): Mr. Agnew, before questioning you further regarding the Port Orford Mill, I would like to ask you whether you know

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

if it was customary for Curry County to sell tracts of timber land in sections or quarter sections, or townships?

Mr. Quinn: I object to that question as calling for the conclusion of the witness and something outside of the issues in this case—what the custom was.

The Court: He is not asking for the custom. He is asking if he knows of such a custom. I think that is permissible.

The Witness: I don't know.

Q. (By Mr. Maloy): Do you know how it happened that in the instance of these sales that these timber lands were put up in townships?

A. No, I don't.

Q. You don't know whether that had been previously arranged with the county court or commissioners, do you? [80]

A. I do not.

Q. You didn't have anything to do with that, with it having been put up in townships, did you?

A. No, I did not.

Q. Now, at this sale in September, 1943, were there any competitive bids?

A. I don't remember of any.

Q. Was there any competing with Mr. Wilson on the bid that he made for the timber when he purchased and subsequently transferred it to you?

A. I don't remember of any competitive bids at the sale.

Q. Now, turning to the Port Orford Mill deal, I believe you stated that when you first began to talk

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

about the mill in April of 1943, when you first met Mr. Wilson—am I correct in that?

A. I wouldn't think so because I don't remember anything about it. I remembered it; it was in the summer, but when, I don't know.

Q. Could it have been in May of 1943?

A. I don't know, Mr. Maloy.

Q. You have no independent recollection?

A. No, I have not.

Q. It was, however, discussed in the early spring or summer of 1943? Is that correct?

A. Well, one trip that I made regarding that was on Thanksgiving Day, and how long before that it started, I don't know. I [81] think it was Thanksgiving Day.

Q. Well, I understood you to say this morning that Mr. Wilson discussed the Port Orford mill with you in the spring of May and June, 1943?

A. It might have been, but I won't say when. That is the only definite date that I remember of any one thing regarding the Port Orford Mill.

Q. Was there any discussion in May or June of 1943 with Mr. Wilson, either in Centralia or Gold Beach, or any other place, regarding your desire to acquire some timber as a nucleus for the Port Orford Mill?

A. No, there wasn't. There wasn't any talk regarding any timber, any portion of timber for any mill. This was all one deal for the Eastern Railway & Lumber Company.

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

Q. Well, Mr. Wilson dealt with you personally in all of these transactions, didn't he?

A. Yes, sir.

Q. He didn't deal with any other officer of the Eastern Railway Company or whatever you call it?

A. No, sir.

Q. And all of the timber that was acquired through these various transactions we have so far discussed, the title was taken in your name as an individual? A. It was taken in my name.

Q. Now, did you discuss with Mr. Wilson the matter of acquiring the Port Orford Mill during the summer of 1943? [82] A. Yes.

Q. Well, what time during the summer of 1943 did you first discuss it? A. That I can't say.

Q. Do you remember his advising you of the Port Orford Mill being in financial distress?

A. Well, that come up after we were—after we were talking about it. I don't remember whether that was at the start or not.

Q. Now, can you fix the time that you discussed the acquisition of the Port Orford Mill, or the acquisition of the stock control with relation to the sale of August, 1943, the tax sale?

A. No, I don't know. There was no connection between them in any way and I wouldn't have any way—

Q. (Interposing): Isn't it a fact, Mr. Agnew, that you were in Port Orford for checking up the assets, the value of the assets of the Port Orford

Plaintiffs' Exhibit No. 4—(Continued)
(Testimony of Samuel A. Agnew.)

Mill as early as on or about August 5th or 6th, 1943? A. I wouldn't—I couldn't say.

Q. Can you say one way or the other?

A. I do not know.

Q. You have no independent recollection?

A. I never took the Port Orford Mill very seriously and I don't know.

Q. Do you remember meeting Mr. Wilson and Mr. Kendall of Portland at the Port Orford Mill in August, 1943? [83] A. No, I do not.

Q. Well, were you or were you not there? Did you or did you not meet them at that time?

A. The only time that I remember meeting Judge Kendall at Port Orford, he came to the cabin with Mr. Wilson—I forget what it was about and they were with someone else there. Mr. Wilson was going to meet someone there and Judge Kendall talked to me about fishing in that lake.

Q. When was that?

A. I don't know. It was late in the evening.

Q. Where was this cabin? Port Orford?

A. Yes.

Q. Then you did meet Judge Kendall at Port Orford some time in the late summer of 1943?

A. I think I met Judge Kendall at Port Orford and I think I met him at Gold Beach once, but both times was very short.

Q. And you also met him in Coquille, didn't you, in September, 1943?

A. I never remember meeting him in Coquille.

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

Q. Do you remember ever meeting Judge Kendall and Mr. Wilson and Mr. Stapleton in Coquille in September, 1943, whereat there was a discussion about acquiring stock of the Port Orford Mill?

A. I don't remember it.

Q. Well, you can say where it did or did not take place?

A. I don't remember.

Q. Well, did you and Mr. Wilson at any time during August or [84] September, 1943, discuss between yourselves the idea or the purpose of acquiring the stock control of the Port Orford Mill company?

A. Well, I don't remember about the stock control, but I remember that a discussion was had many times about buying the mill.

Q. All right; did you discuss with him during August or September the buying of the mill, all of its physical assets?

A. Well, a man by the name of Stapleton, as I remember it, was the one that was talking to Mr. Wilson about the mill, and he was going to sell the property. And we come to find out that he wasn't even an officer of the company. I don't know what happened.

Q. He was president of the company, wasn't he?

A. As I understood it, he wasn't an officer. As I understand it, he had control of the stock, but when it came to the showdown of being able to sell the mill, he didn't have that authority. I am quite sure on that.

Plaintiffs' Exhibit No. 4—(Continued)
(Testimony of Samuel A. Agnew.)

Q. Were you going to buy the mill? Were you going to buy the mill from the company if Mr. Stapleton did have authority?

A. It was only in the talking stage, and as to whether it got down where we was going to buy it, I wouldn't say that it had gone down to that point. I think that it wasn't that. We offered to put some money into escrow providing it could be worked up and the claims all paid and the debts all paid, and turned over free and clear. [85]

Q. When was that? A. I don't remember.

Q. Well, you can't say whether it was July or August or September of 1943? A. No.

Q. Was Mr. Wilson present at these negotiations? A. What negotiations?

Q. With Mr. Stapleton, relative to acquiring this control, of this mill company, and putting these matters in escrow that you speak of?

A. Well, I went down to San Francisco once and met Mr. Wilson and Mr. Stapleton there. I met Mr. Wilson many times as far as that goes.

Q. When? A. During the summer of '43.

Q. And on these numerous occasions that you mention, did you discuss with Mr. Wilson the acquisition of the Port Orford Mill?

A. Yes, the Port Orford Mill was sort of a pet of Mr. Wilson's. He wanted us to buy it.

Q. He wasn't selling it to you, was he?

A. No. As I told you this morning, he said his

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

object was to get us to manufacture and consume logs.

Q. And there was no conversation, however, between you and Mr. Wilson about his acquiring any timber for the mill, was there? A. No.

Q. Well, now, then, did anything ever come out of your negotiations [86] relative to acquiring the Port Orford Mill at Port Orford, Oregon? Did anything ever come out of it?

A. That is, you mean, acquiring the mill?

Q. Yes. A. No.

Q. Did you acquire a mortgage on the mill at any time during the fall of 1943, or the late summer? A. Yes, sir.

Mr. Quinn: I object to that line of testimony, in that it is incompetent, irrelevant and immaterial.

The Court: Overruled.

The Witness: Yes, sir.

Q. (By Mr. Maloy): Do you remember when it was that the mortgage was acquired?

A. No, I do not.

Q. Did you handle the transaction yourself?

A. No, sir. Mr. Bennefield of Marshfield handled the transaction, or attempted to.

Q. Well, do you know who negotiated for the purchase of the mortgage? Was it Mr. Bennefield or Mr. Wilson?

A. That I couldn't say. I think it was Mr. Wilson. I think Mr. Bennefield acted as counsel.

Q. You and Mr. Wilson had a couple of con-

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

versations during the summer of 1943 with Mr. Bennefield? A. Yes, sir.

Q. And you also authorized Mr. Bennefield to go ahead and [87] represent Mr. Wilson in regard to the foreclosure of the mortgage on the Port Orford Mill?

Q. Well, I don't remember whom I authorized. Mr. Wilson was handling it, and Mr. Bennefield was the counsel.

Q. You did acquire the mortgage?

Mr. Quinn: I don't want to object, but the question is incompetent, irrelevant and immaterial.

The Court: Overruled.

Q. (By Mr. Maloy): You did acquire the mortgage? A. Yes.

Q. And did Mr. Bennefield foreclose it? Or do you know?

A. Well, just how far that got, I don't know. It was paid, but how far the progress went, I don't know.

Q. Did Mr. Wilson have anything to do regarding the foreclosure of the mortgage?

Mr. Quinn: I am going to object to that. I don't know what that has to do with proving a joint venture in this matter.

The Court: I will overrule the objection. I am not going to permit it to go too far or get to the point where it is not material. But within certain limits I think it has some very particular bearing on the case.

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

Q. (By Mr. Maloy): Did Mr. Wilson handle the foreclosure proceedings along with Mr. Bennefield?

A. Yes. Just how it was done, I don't know. [88]

Q. And is it not a fact that when Mr. Bennefield wrote you a letter regarding the proceeding, the foreclosure proceeding, that you immediately forwarded to Mr. Wilson the original letter?

A. I don't remember Mr. Bennefield sending me the letters. But he probably did. I don't remember it.

Q. You don't remember forwarding them to Mr. Wilson, and asking him to look after them?

A. I don't remember.

Q. You didn't have anything to do with the matter of foreclosing the mortgage or attempting to acquire the title to the property, to the mill, did you, personally? A. No.

Q. You put up the money?

A. Only put up the money.

Q. You bought the mortgage?

A. Paid the bills.

Q. Do you know whether or not the mortgage was foreclosed? A. I don't know.

Q. You did get your money back though?

A. I think so.

Q. And interest, and attorneys' fees?

A. Yes; there was some squabbling, but I think that was taken care of.

Q. And who handled the getting of the matter

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

settled up and closed, and you getting the money back? Mr. Wilson or [89] Mr. Bennefield?

A. I really couldn't say.

Q. You knew that Mr. Wilson made several trips to San Francisco on the matter, didn't you?

A. I don't remember that he did. Mr. Wilson lived at San Carlos at that time. I couldn't say. At the time I went down, I met Mr. Wilson in San Francisco. [90]

Q. Now, in all these transactions up to date, Mr. Agnew, including the matter pertaining to tax title timber, you didn't pay him any compensations for that work, did you?

Mr. Quinn: I object to that question. Does that include the Port Orford Mill?

Mr. Maloy: No; I am going to take that separately.

A. What was that again, please?

Q. I say, you didn't pay Mr. Wilson any compensation for the handling of these various tax sales?

Mr. Quinn: I object to that as incompetent, irrelevant and immaterial. It is a conclusion of the witness.

The Court: Objection overruled.

A. No; that was carried on just as I stated this morning. Mr. Wilson said he wasn't doing anything and he would be glad to carry on.

Q. All right. And is that also true regarding his services and the work and labor he did pertaining

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

to the acquisition of the mortgage in the Port Orford Mill and foreclosure?

Mr. Quinn: Just a minute. I object to that as incompetent, irrelevant and immaterial. It is no part of this case based on their complaint here on the question of joint venture. They were to acquire timberlands according to their theory of the case and resell them at a profit.

The Court: I will tell you, Mr. Quinn, the reason I am overruling your objection on this is because these questions do have some bearing and cast some light upon the question of [91] whether or not these people were joint venturers, and that is the sole purpose upon which I am admitting the testimony.

Q. (By Mr. Maloy): Will you answer the question, please? The question was: Did you pay Mr. Wilson any compensation for his services and the work and labor he did in connection with the Port Orford Mill?

Mr. Quinn: We will reserve our objection.

A. I don't think so.

Q. (By Mr. Maloy): Now, up to the time that you acquired your mortgage on the Port Orford Mill, Mr. Agnew, how often did you see Mr. Wilson?

A. Oh, I don't know. This Port Orford Mill would seem to be a hobby of Mr. Wilson's, and I never thought much of it; never give it very much consideration. But Mr. Wilson wanted to get it,

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

wanted to operate it, and we were operating the mill in Centralia and Mr. Wilson says that will get you started down here manufacturing, and said, "I will sell you more timber." And that was the set-up.

Q. Well, you had already acquired some twenty-eight thousand acres of timber from Curry County, hadn't you?

A. The Port Orford Mill was entirely separate from the timber.

Q. Well, however, it was the nearest mill to the timber that you had bought from the county of anywhere in Oregon, wasn't it?

A. Yes, but their plan was to Port Orford Mill. It wasn't situated so that the timber had been cut out around the Port Orford Mill. It was really a proposition of peak operation. [92] Operated for a short time, but it would have to be moved. The timber had practically been exhausted around the Port Orford Mill. The haul was too long.

Q. Then did you acquire the mortgage and foreclose that mortgage on it for the Port Orford Mill with the view of moving that mill?

A. Well, the idea was to be bought was to cut out what little there was if it wasn't too far a haul. There was then a demand for lumber, and we would ship it—ship the uppers to the Centralia plant and kiln dry it and manufacture it there. It was a green mill and an old mill. It wasn't much of a mill; it was an excuse really.

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

Q. I realize that, Mr. Agnew, but, nevertheless, would the ownership of a mill anywhere in the vicinity or locality of any timber that you had previously purchased from any source have any bearing upon the future value of that timber?

A. Sir?

Q. I say, would the acquisition of the Port Orford Mill have any bearing upon future value of any timber that you had acquired anywhere in the vicinity?

A. I don't think the Port Orford Mill would be considered an asset or advantage to any timber as far away as that timber is from the Port Orford Mill.

Q. Well, it is the nearest mill to any timber you had acquired, wasn't it?

A. They couldn't operate it; it was torn down and dismantled. [93]

Q. Then your purpose of buying or acquiring the mortgage on the Port Orford Mill was for the purpose of dismantling the thing, was it?

A. Well, probably after I figured that at the best it would be a short operation with the Port Orford Mill.

Q. Then you were going to dismantle it if you got title to it?

A. Well, that is the way it looked, and it looked like it would have to be bought cheap enough to operate it a short time. That is the way it looked to me.

Plaintiffs' Exhibit No. 4—(Continued)
(Testimony of Samuel A. Agnew.)

Q. And that was the plan Mr. Wilson was trying to sell you—to buy the Port Orford Mill

A. Well, I don't know what Mr. Wilson's plans were. We didn't agree on our plans; I don't know what his plan was.

Q. Did he tell you what his plan was and what his purpose was in trying to get you to buy the Port Orford Mill?

A. Mr. Wilson was quite a visionary. He had a great many ideas that didn't coincide with mine; about that I couldn't say. We looked at a number of mills.

Q. Well, but, nevertheless you put up your money and bought the mortgage, didn't you?

A. That is right. That was a business proposition because we figured the mortgage was good.

Q. At the time, Mr. Agnew, that you were foreclosing the mortgage on the Port Orford mill, were you in the process of acquiring any other timber than tax title timber in Curry County?

A. Well, it extended over—drawn out over quite a period, and [94] I think while the mortgage was still hanging on, it was run into the time when we were buying other timber.

Q. In other words—See if I am correct, Mr. Agnew—the foreclosing proceedings dragged out over a period of a year or eighteen months?

A. I don't remember how long.

Q. Well, approximately, would you say?

A. Well, I wouldn't attempt to say.

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

Q. Very well, but during that period of time that the mortgage was being foreclosed, and you were endeavoring to get title you were acquiring other timber or endeavoring to acquire other timber in the immediate vicinity of the Port Orford mill?

A. Well, we never did buy any timber in the immediate vicinity of the Port Orford mill.

Q. All right. How far is the Rutherford tract from Port Orford Mill? A. Too far to haul.

Q. How far was it?

A. I was trying to locate Port Orford. It is thirty miles north of Gold Beach; I believe they called it about fifty-five miles.

Q. Well, at that time the owner of the mill hauled logs from the Rutherford tract?

A. They hauled, I think it was one "Forty."

Q. And that was the very time you were dealing for the Rutherford tract, wasn't it? [95]

A. No, that was prior to that. That was—I think they were cutting the timber off that forty the first time I was at the Port Orford mill, but they didn't do it long.

Q. Well, now, how far is the Frick tract from the Port Orford mill?

A. Oh, it would just be a guess.

Q. Well, what is your best idea of it?

A. Twenty-five.

Q. And you acquired title to the Frick tract later on, didn't you?

Plaintiffs' Exhibit No. 4—(Continued)
(Testimony of Samuel A. Agnew.)

A. Yes. I don't remember just when it was, but, yes.

Q. In the fall of '43 or the early part of '44, wasn't it?

A. No. I think it was later '44 if I remember right, but I am not sure.

Q. I see. Well, the date doesn't matter much. How about the Reynolds tract? When did you acquire title to that?

Mr. Quinn: May it please the Court. The deeds are here and they can get him the exact dates. You must remember this happened a long time ago.

The Court: Of course if he doesn't know he can so state and the deeds will be the best evidence, but if he doesn't remember he can so state.

Q. (By Mr. Maloy): What about the Reynolds tract, Mr. Agnew?

A. You mean as to how far that is?

Q. Yes. How far is that away from the Port Orford Mill?

A. I don't know, but I think about eighteen or twenty miles. [96] I am not sure.

Q. And you acquired title to that during the fall of '43, or the early part of '44? Somewhere along there?

A. Yes, but there was no connection with the Port Orford mill, my buying it.

Q. Well, the Daley Breed tract, how far is that away from the Port Orford mill?

A. Oh, thirty miles, probably thirty-five miles.

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

Q. Now all of those tracts that I have just mentioned, those four tracts have quite a large amount—shall I say merchantable timber, on them, haven't they? A. Yes.

Q. Running into many millions of feet?

A. Well, it would run into millions, yes.

Q. But there is no connection between your acquisition of those tracts of timber, as I understand you, and the attempt to acquire the title to Port Orford mill?

A. Not buying them, absolutely not.

Q. None at all? You know, do you not, Mr. Agnew, from your personal experience as a lumber man and sawmill man that they haul logs long distances now to the mills, especially in this vicinity? That is right, isn't it? A. Yes.

Q. You see trucks every day on the highway, interfering with our usual modes of transportation to——

Mr. Quinn: Of course that is facetious. [97]

Mr. Buffington: I think that is highly argumentative, not factual at all.

Q. (By Mr. Maloy): Well, now, did you acquire in your dealings with Mr. Wilson, after you had acquired the tracts of tax title timber in Curry County, any privately owned land in Curry County other than these four tracts that I have just described or mentioned? A. Privately owned?

Q. Yes, private owners. A. Yes.

Q. Did you acquire a tract of timber known as

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

the Bankus tract? A. Yes.

Q. And where is that tract of timber located?

A. Well, it is, I would say, mostly on the Chetwood River.

Q. In Curry County, Oregon? A. Yes, sir.

Q. And who handled the negotiations looking to the purchase of that tract of timber?

A. Mr. Wilson.

Q. And over how long a period of time, if you know, was he negotiating for the tract of that timber with Mr. Bankus? A. I don't know.

Q. Well, maybe I can refresh your memory. Was it over a year that he was dealing with Mr. Bankus endeavoring to make a deal with him?

A. Well, as I remember, at the time of the sale there was [98] something about the timber that Mr. Bankus used and the timber that the county had taken for taxes and started in on it, and it came out that he wanted to see if he could get some concession from the county or something, and I don't think anything was done then and it run along. It might have come up at different times.

Q. The Bankus tract was heavily encumbered with delinquent taxes, wasn't it, at the time Mr. Wilson was negotiating for it?

A. Yes, a lot of the timber was.

Q. And that probably is also true of the Breed tract and the Rutherford tract and the Reynolds tract. All of those tracts were way behind in the payment of the taxes?

Plaintiffs' Exhibit No. 4—(Continued)
(Testimony of Samuel A. Agnew.)

A. Well, I wouldn't say all of them, but I know some of them were.

Q. And so, therefore, in acquiring these privately owned tracts of timber, do you know whether or not there was a considerable period in which negotiations were carried on? A. Yes, there were.

Q. And that is also true of the Bankus tract?

A. I think so.

Q. Did you have any negotiations at all with Mr. Bankus?

A. Well, I met Mr. Bankus and he talked about the timber and he wanted to hold out certain river frontage; he had a town site there and summer homes planned, and it was discussed two or three times.

Q. You discussed it two or three times with Mr. Bankus? [99] A. Yes.

Q. When did you first meet Mr. Bankus?

A. Oh, I couldn't say.

Q. Was it early in the negotiations?

A. Yes, I think it was.

Q. Do you remember where it was that you met him when you first talked to him about these negotiations?

A. Well, I met him at Brookings a couple of times.

Q. Where did you meet him in Brookings?

A. You mean what building?

Q. Where did you meet him? In his office or home or where? A. I don't remember where.

Plaintiffs' Exhibit No. 4—(Continued)
(Testimony of Samuel A. Agnew.)

Q. Who else was present at the time you first met him in Brookings?

A. I couldn't say that. I know one of the meetings; Mr. Wilson and I met him, I think at his home.

Q. At his home. Was that on a Sunday?

A. I couldn't say.

Q. When was the next time you met him and carried on any negotiations with him in regard to the purchase of the Bankus tract?

A. I don't know as I can tell you, if you would call them negotiations that were discussed with him. There were certain things that he seemed like he wanted to sell. He wanted to have a number of reservations. It wasn't ever really clean cut so you could tell just what. [100]

Q. Well, with reference to the first time that you talked with him or discussed with him the possibility of acquiring this timber, where was it that you met him on the second occasion? Can you give us any idea of that?

A. No, I couldn't. I couldn't say.

Q. Where did you meet him the second time and who was present?

A. I don't remember that.

Q. How long after the first time was it that you talked with him the second time?

A. I don't know. I think I met him once in Crescent City, too.

Q. Was Mr. Wilson present?

A. I think so.

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

Q. All right now——

A. (Interposing): I think once when Mr. Wilson wasn't present and I think the other time Mr. Wilson was.

Q. When was the time you talked with him, to him when Mr. Wilson wasn't present?

A. I don't know; I don't remember.

Q. Was that the first time?

A. Oh, I think the first time that I met Mr. Bankus and talked with him about the timber was early and Mr. Troxel was with me and he was more interested in town sites than he was in selling timber. He said he had a lot of timber; he thought he would sell it, but other than that I don't remember much about it.

Q. Was that the first time you talked with him when Mr. Troxel was present? [101]

A. I think that was the first time; I am not sure.

Q. Mr. Troxel is the gentleman now dead?

A. Yes.

Q. When did he die, by the way, Mr. Agnew?

A. I think in June, 1945.

Q. Now, have you any way of telling us when was the third time that you and Mr. Bankus met?

A. No, I haven't.

Q. Nor where it was, nor who was present?

A. (Witness shaking head indicating negative response): I think I met him at Crescent City once.

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

Q. Who brought to your attention the Bankus tract in the first instance?

A. Mr. Wilson. Oh, the first time was Troxel, but that was quite some time ago. That was, oh, I would say in the winter of '32 and '33. No, I mean '42 and '43.

Q. The winter of '42 and '43? A. Yes.

Q. Were you operating down in this country in '42? A. No.

Q. You hadn't purchased any timber down here in '42, had you? A. No, we hadn't.

Q. Well, then, did Mr. Troxel—You say in '42—direct your attention to the Bankus tract? Was it then that you went and talked—I am asking you, Mr. Agnew, whether Mr. Troxel and you first saw Mr. Bankus in 1942 regarding the purchase of the [102] Bankus tract?

A. I understood you to say who was the first one that called my attention to the Bankus timber.

Q. I asked you that and then I asked you this last question whether it was in 1942 that you and Mr. Troxel saw Mr. Bankus. I understood you to say heretofore that Mr. Troxel brought that to your attention and you first saw Mr. Bankus when Mr. Bankus and Mr. Troxel were present. Now what is the fact?

A. Well, I think that is correct. I am not sure about when I saw him, but I am sure it was Mr.—it doesn't make any difference but it was Mr. Troxel that told me about the Bankus timber and how he

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

come to get it and about what status it was and what the taxes were against it. That is the thing that stands out in my mind.

Q. And that is in 1942? A. I think so.

Q. And then how long after Mr. Troxel directed your attention to the situation on the Bankus tract was it that you and Mr. Troxel went to see Mr. Bankus?

A. Well, we didn't go to see him. That is, we didn't make it a point. You asked when it was or who it was that called my attention to the Bankus timber first.

Q. Well, let me see if I can get you straight. It was you and Mr. Troxel that first contacted Mr. Bankus with the view of purchasing the Bankus tract? A. No, I didn't say that. [103]

Q. Who was it then that directed your attention to Mr. Bankus' tract?

A. It was Mr. Troxel that called my attention to the Bankus tract, but he didn't talk selling it to me. He was just recommending it.

Q. All right, then, who was it?

A. He wasn't a timber broker.

Q. Who was it that first directed your attention to the commencement of the negotiations whereby you acquired the Bankus tract?

A. Mr. Wilson.

Q. Mr. Wilson. All right. Well, you knew that Mr. Wilson wasn't a timber broker, didn't you?

A. What?

Plaintiffs' Exhibit No. 4—(Continued)
(Testimony of Samuel A. Agnew.)

Q. You knew that Mr. Wilson wasn't a timber broker? A. I knew he was.

Q. Well, he didn't have any office, did he?

A. He always said he was a timber broker and a good one. I have heard him say it twenty-five times.

Q. He didn't have any office at Gold Beach at any time, did he?

A. I don't know whether he ever had an office at Gold Beach or not. He had an office, as I understand it, called "Wilson Timber Company" at Eureka.

Q. Yes, but that was a couple of years later.

A. Well, I don't remember.

Q. Did you ever know him to have an office, to open an office [104] in Gold Beach, Oregon?

A. No, I don't remember anything about it. He told me he was going to, but I don't know whether he ever did.

Q. Well, going back to the Bankus deal, just one or two questions more. It is a fact, isn't it, Mr. Agnew, that Mr. Wilson opened up the Bankus deal and closed it? A. Yes.

Q. And handled all of the negotiations?

A. Yes, sir.

Q. And did you pay him—did you pay Mr. Wilson any compensation? A. Yes, sir.

Q. On the Bankus tract? A. Yes, sir.

Q. How much did you pay him on the Bankus tract for compensation?

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

A. Well, now on all of the deals——

Q. (Interposing): I am talking about the Bankus tract. A. Well——

Mr. Quinn: I think he ought to be allowed to answer in his own way.

Mr. Maloy: He started to talk about all of the other deals and I move that the answer be stricken.

The Court: If the answer could be confined to that particular tract I will permit it.

Q. (By Mr. Maloy): I want to know how much [105] you paid on that transaction.

A. Ten thousand dollars.

Q. Ten thousand dollars? A. Yes, sir.

Q. And how did you pay him that ten thousand dollars? A. By check.

Q. How is that? A. By check.

Q. At the time the deal was closed?

A. No, before the deal was closed. Mr. Wilson, as a rule, got his first.

Q. When did he get this ten thousand dollars that you are speaking of now on the Bankus tract deal?

Mr. Quinn: Well, I will suggest at this time that we have got a lot of checks and drafts. We have the check he is referring to here and I think it would be only fair to the witness to present him with that.

The Court: Well, if he has any independent recollection I will permit him to testify to it. If he hasn't, I will permit him to refer to checks.

Plaintiffs' Exhibit No. 4—(Continued)
(Testimony of Samuel A. Agnew.)

(Last question read by the reporter.)

A. The ten thousand dollars, well I think it was in late December of '45.

Q. (Continuing): December of 1945. Was it before the deal was consummated?

A. Yes, sir. [106]

Q. What?

A. Yes, sir, that is as I understand it was.

Q. Well, now, I move to strike that.

Mr. Quinn: We will object to that. He is explaining his answer. He has a right to complete it.

The Court: Go ahead.

A. As I remember it that was it.

Q. (By Mr. Maloy): Go ahead.

A. That was the earnest money that was paid.

Q. That was the earnest money that was paid down? A. That is what Mr. Wilson told me.

Q. He told you the earnest money paid down, the ten thousand he was getting as his commission?

A. No, he didn't tell me he was getting any commission. The price on the Bankus piece was a hundred and ten thousand dollars to start with.

Q. All right. How much did you pay for the Bankus tract?

A. Well, I think a hundred and ten thousand dollars.

Q. It went into escrow, didn't it, Mr. Agnew?

A. Yes, but I had already paid it.

Mr. Quinn: At this time I am going to ask that

Plaintiffs' Exhibit No. 4—(Continued)

(Testimony of Samuel A. Agnew.)

the witness be permitted to see his checks and what he paid.

The Court: If he can answer these things by his independent recollection, I will permit him to do so. If you get out a bunch of checks here the issue will just be confused.

(At this point there was a discussion [107] regarding recessing until Monday morning, November 14, 1949, at 10:00. The court recessed at 4:15 p.m.) [108]

Reporter's Certificate

State of California,
County of Alameda—ss.

We, Elwood L. Quayle and Mary Lou Quayle, do hereby certify:

That we were appointed official reporters in the case of Samuel J. Wilson vs. Samuel A. Agnew, tried on Thursday, November 10, 1949, at Crescent City, California, in the Superior Court of the State of California, in and for the County of Del Norte, before the Honorable Samuel F. Finley, Judge presiding, and that we reported the testimony and proceedings at said time and place and thereafter caused our shorthand notes to be transcribed, and that this is a full, correct, and complete transcript of said testimony and proceedings to the best of our ability, commencing at page one hereof and continuing to page one hundred and eight.

Plaintiffs' Exhibit No. 4—(Continued)

In Witness Whereof, we hereby subscribed our hands this 8th day of February, 1954.

/s/ E. L. QUAYLE,

/s/ MARY LOU QUAYLE.

Received in evidence October 25, 1955.

PLAINTIFFS' EXHIBIT No. 5

In the Superior Court of the State of California
in and for the County of Del Norte
No. 4060

SAMUEL J. WILSON,

Plaintiff and Cross-Defendant,

vs.

SAMUEL A. AGNEW,

Defendant and Cross-Complainant.

No. 3801

SAMUEL A. AGNEW,

Plaintiff,

vs.

SAMUEL J. WILSON,

Defendant.

No. 4061

SAMUEL A. AGNEW,

Plaintiff,

vs.

SAMUEL J. WILSON and EVA MAY WILSON,
Defendants.

STIPULATION

It Is Hereby Stipulated between the parties hereto, in the above-entitled actions, that by and through their respective counsels of record that the above-entitled actions have been and are settled and compromised upon the following terms, to wit:

I.

Samuel A. Agnew shall transfer all his right and title and interest in and to what is known as the Kepner Tract, situated in Humboldt County, California, to Samuel J. Wilson, by good and sufficient form of conveyance.

II.

Samuel A. Agnew shall convey to Samuel J. Wilson all of the right, title and interest to what is known as the Clutter Tract, situated in Township 36, Range 14, Curry County, Oregon; also all his right, title and interest in what is known as the Reid Tract, situated in Township 36, Range 14, Curry County, Oregon; also his right, title and interest to all other land owned by Samuel A. Agnew, situated in Township 36, Range 14, Curry County, Oregon.

III.

Samuel J. Wilson shall convey by good and sufficient conveyance all of the right, title and interest in what is known as the Gilbert Thorp Tract, situated in Del Norte County, California to the said Samuel A. Agnew.

IV.

All actions pending between the parties hereto shall be dismissed with prejudice and without costs, whether in the state or federal courts in the States of California or Oregon.

VI.

Each party to the above-entitled actions shall make, execute and deliver, or cause to be made, executed or delivered to the others a general release, releasing and discharging said other parties from all claims, demands or liabilities of any kind or character which either claims against the other.

VII.

The parties hereto shall make, execute and deliver to the other such other conveyances, documents or other papers that may be necessary to carry into full force and effect the terms of the foregoing stipulation.

Dated: November 14, 1949.

/s/ SAMUEL J. WILSON,

/s/ SAMUEL A. AGNEW,

/s/ C. E. H. MALOY,

/s/ C. D. CUNNINGHAM,

/s/ WM. W. SPEER,

/s/ IRWIN T. QUINN.

Received in evidence October 25, 1955.

PLAINTIFFS' EXHIBIT No. 9

In the District Court of the United States
for the District of Oregon

Civil No. 8011

THE UNITED STATES NATIONAL BANK OF
PORTLAND (OREGON), Executor of the
Estate of Sam J. Wilson, Deceased, and Jessie
Wilson,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

ORAL EXAMINATION BEFORE TRIAL
(At Instance of Defendant)

Be It Remembered that on the 28th day of June, 1955, at the hour of 10:00 o'clock a.m., at the office of S. A. Agnew Lumber Company, Centralia, Washington, pursuant to notice and subpoena, personally appeared before me, James R. Royse, a Notary Public in and for the State of Washington, County of King, duly appointed and commissioned to administer oaths,

SAMUEL A. AGNEW

called to testify on oral examination for the purpose of discovery before trial at the instance of the defendant:

C. E. WHEELOCK, ESQ., and
CHARLES P. DUFFY, ESQ.,

Appearing for and on Behalf of Plaintiffs;

Plaintiffs' Exhibit No. 9—(Continued)
(Deposition of Samuel A. Agnew.)

RICHARD M. ROBERTS, ESQ., and
ALLEN A. BOWDEN, ESQ.,

Special Assistants to the Attorney General,
and

THOMAS R. WINTER, ESQ.,

Special Assistant to the Regional Counsel
for the Internal Revenue Service,
Appearing for and on Behalf of De-
fendant;

C. D. CUNNINGHAM, ESQ.,

Appearing for and on Behalf of Samuel A.
Agnew.

(Whereupon, the following proceedings were
had and done, to wit:)

Mr. Roberts: I gather everyone is ready. Mr.
Agnew——

Mr. Wheelock: Before we get started with this
deposition, what about objections to questions and
the admissibility of the evidence and the admissi-
bility of the deposition itself?

Mr. Roberts: Of course, all that can be objected
to at any time during the trial—the admissibil-
ity——

Mr. Wheelock: Are we going to have any stipu-
lation?

Mr. Winter: Let it be taken pursuant to the
rules applicable in this jurisdiction, with notice

Plaintiffs' Exhibit No. 9—(Continued)

(Deposition of Samuel A. Agnew.)

filed in the District Court of the United States for the District of Oregon, and it is taken under the rules pursuant to notice and subpoena served upon Mr. Agnew.

Mr. Wheelock: What about the sufficiency of the questions with relation to the answers and the evidentiary rules? Are we going to have a stipulation that all [2*] objections will be reserved until the time of trial?

Mr. Winter: Yes, all objections reserved until the time of trial.

Mr. Wheelock: And as to the use of the deposition as evidence, we will object to the use of the deposition as evidence at the time of trial.

Mr. Roberts: There is nothing to prevent objecting to it.

Mr. Wheelock: That is right. We will want to object to it.

Mr. Winter: You are going to object to it?

Mr. Wheelock: Yes.

Mr. Winter: On what ground?

Mr. Wheelock: I don't think it is 100 miles.

Mr. Winter: From Portland?

Mr. Wheelock: Yes.

Mr. Roberts: Of course, that is not the rule that applies. It is 40 miles from the place of residence——

Mr. Winter: We can go into that later.

*Page numbering appearing at foot of page of original Reporter's Transcript of Record.

Plaintiffs' Exhibit No. 9—(Continued)
(Deposition of Samuel A. Agnew.)

Mr. Wheelock: That is all we want in the record at this time.

SAMUEL A. AGNEW

being first duly sworn, testified on oath as follows: [3]

Direct Examination

By Mr. Roberts:

Q. Will you state your name and address, Mr. Agnew, to the court reporter, please?

A. Samuel A. Agnew, 210 West Magnolia, Centralia, Washington.

Q. And what is your occupation, Mr. Agnew?

A. Lumbering.

Q. How long have you been in the lumber business, sir? A. (Pause.)

Q. Can you give us an approximate length of time? A. Oh, 30 years.

Q. And have you been in Centralia all that time?

A. In and out, yes. My residence has been in Centralia all that time.

Q. And the name of your company is what?

A. You mean at the present time?

Q. Yes.

A. It is Agnew Lumber Company. That is the one that operates the mill, and the other company is the Eastern Railway & Lumber Company, who owns the mill, and the timber is in the name of S. A. Agnew.

Q. Mr. Agnew, did you have occasion to meet

Plaintiffs' Exhibit No. 9—(Continued)

(Deposition of Samuel A. Agnew.)

a Mr. Samuel Wilson? A. Yes.

Q. When to your knowledge was the first time you met Mr. [4] Wilson, sir?

A. Well, I think it was January, 1943.

Q. Did you know of Mr. Wilson prior to January, 1943? A. I did not.

Q. Now, in 1943 how many mills did you operate? A. The one here at Centralia.

Q. Is that the only mill that you had at that time? A. Yes, sir.

Q. And what was the occasion for your meeting Mr. Wilson?

A. Well, there was a party in Chehalis who came over and said he had been negotiating with some parties in Oregon, southern Oregon, for timber, and he wanted to know if I would go down to look at it and be interested, and I told him yes, and when he came he brought Wilson with him.

Q. Who was this party in Chehalis?

Mr. Cunningham: If I can interrupt, Anderson.

A. Anderson.

Q. Your meeting with Mr. Wilson was here in Centralia, was it? A. Yes, sir.

Q. And what business did Mr. Wilson say he was in, if any, at that time?

A. Well, he said he was handling timber.

Q. Did he say where the timber was that he was handling?

A. Well, the timber he showed me, and I think

Plaintiffs' Exhibit No. 9—(Continued)

(Deposition of Samuel A. Agnew.)

he said in southern Oregon. It was Curry County, Oregon. [5]

Q. You say he showed you the timber. Did you have occasion to go with him to see any timber?

A. Yes, at first I did.

Q. And how long after you had met Mr. Wilson was it that you went to see this timber?

A. Well, probably ten days.

Q. And where was this that you went to in Oregon? A. It was Curry County.

Q. Now, at that time did you have any agreement with Mr. Wilson as to purchasing timber?

A. Well, Mr. Wilson said he wanted to handle it, that he would locate the timber and he would buy it and sell it to me; that he didn't have a broker's license, and he would get his from the sale of it.

Q. Did you ever pay Mr. Wilson anything for locating the timber? A. No, sir, not directly.

Q. Now, what was the first timber that you remember Mr. Wilson located for you?

A. Well, I think the first was on what they called Lobster Creek.

Q. And do you know about when this was, sir?

A. Well, I would say it was February, 1943. That is the nearest I can say to my recollection.

Q. Now, can you give us any idea of how many different [6] transactions Mr. Wilson had in locating timber for you?

A. No, I couldn't because this first one didn't go through. He also offered to sell it to other

Plaintiffs' Exhibit No. 9—(Continued)

(Deposition of Samuel A. Agnew.)

parties, and he had given them an option on it before he had us look at it, and we didn't get it.

Q. Do you know whether or not at the time it was offered to you Mr. Wilson either owned or had an option on that timber?

A. As far as really knowing, no, I don't know, but he did sell the timber to other parties.

Q. Did he tell you personally whether he had an option or owned the timber?

A. He told me he had an option on the timber.

Q. But you didn't purchase this particular tract of timber from him? A. No, sir.

Q. Do you know who did, sir?

A. It was a group in Chehalis.

Q. Do you know who they are—any of them?

A. It was Bill West and Laddie James McCutcheon, a timber cruiser.

Q. When Mr. Wilson would locate the timber, would you, yourself, go and look at it?

A. Yes, sir.

Q. And did you look at every tract before you bought it finally? [7]

A. Yes, sir, with the exception of the county timber. Mr. Wilson was opposed to that, and we sort of split over it. He didn't want anything to do with it. He opposed buying it. Later he said he didn't want to lose his prestige if he didn't have anything to do with the part bought from the county.

Q. Do you know whether or not Mr. Wilson maintained an office any place?

Plaintiffs' Exhibit No. 9—(Continued)
(Deposition of Samuel A. Agnew.)

A. Oh, I think he opened an office in Eureka, but I never was in it.

Q. You never were in his office? A. No.

Q. Did you ever receive any mail from Mr. Wilson? A. Yes.

Q. Was there any particular letterhead that he used?

A. Well, there were two or three—Samuel J. Wilson Timber Company. There were several. I am not just sure of them, but they can be found.

Q. Do you know whether or not during this period after February, 1943, other than this first lot of timber that you say Mr. Wilson sold to someone else—do you know of any other tracts that were sold by Wilson to other purchasers besides yourself?

A. Well, the only other one I remember specifically was one that he talked to me about, and I went to look at it, and [8] it was very good, and he bought it himself.

Q. Did you ever purchase it, or purchase it from him, rather? A. I am not sure on that.

Q. Do you know what tract that was, sir?

A. I think he bought it. I don't know the tract. It was bought in his wife's name. I think he bought it for his wife.

Q. Would you state for the record just what your arrangement with Mr. Wilson was regarding timber?

A. Well, I won't say he located the timber, but he would get it from either hearsay or someone

Plaintiffs' Exhibit No. 9—(Continued)

(Deposition of Samuel A. Agnew.)

offering it. And at first it was awfully hard for us to get a description of it. He would tell me about where it was and in whose name it was and look it up, but as far as Mr. Wilson going in and showing me the timber, he didn't. He wasn't, that is, as far as actually knowing timber—that wasn't Mr. Wilson's line. That was up to us. Then we would have a discussion and look at it, and he would say, "I can sell it to you for so much." If it was satisfactory, we would take it, and if we didn't think it was worth that, there was some dickering, and that was the way it was handled.

Q. How was Mr. Wilson to be paid for this work, sir?

A. By the seller. What Mr. Wilson paid for it was no concern of ours.

Q. Now, how long did you and Mr. Wilson continue to have this [9] arrangement?

A. Well, that I couldn't say. I don't know, but I think through 1945. That would be just my guess. I think that can be determined, but I don't remember.

Q. Now, was there any particular area, concerning the geographic area, of the states that Mr. Wilson was to work in, sir?

A. No, sir.

Q. Is it a usual practice in the course of your business for you to have dealings with people the same as you have described with Mr. Wilson?

A. Yes, a number of them.

Plaintiffs' Exhibit No. 9—(Continued)
(Deposition of Samuel A. Agnew.)

Q. Do you remember the Gilbert Thorp tract, sir?

A. Yes, sir.

Q. Can you give us the particular details on your purchase of that tract—just what the mechanics of buying that tract were?

A. Well, it was bought just the same as the rest of it outside of the county stuff. He bought it and held it in his own name until the settlement was made.

Q. Now, Mr. Agnew, do you have at the present time the drafts that were used to purchase this timber?

A. Well, I don't have them, but I think, as Mr. Cunningham stated, they can be obtained.

Q. Do you have the checks that were issued in these timber [10] deals?

A. The drafts or checks—I think they are all available, I would judge. After they went into the court I just lost track of them, as far as that goes.

Q. And you have never seen them since the time they went in the court down there in California?

A. No, sir.

Q. And as far as you know, your attorney still has those?

A. Well, I would think so, but I don't know. There may be some of them here, but I am not sure. In fact, I never had any connection with them or line on them at all. I figured that it was a closed book.

Q. Now, as to the county timber that you de-

Plaintiffs' Exhibit No. 9—(Continued)

(Deposition of Samuel A. Agnew.)

scribed, how did you happen to purchase that, sir?

A. Well, it was advertised. It had been put up before for sale, and Wilson's attitude was to stay away from it, to leave it alone, it was dynamite. So, finally, in checking it I told him I was going ahead with it, and he said, "Well, that is where we part. I don't want anything to do with it." He ridiculed the idea and brought all the pressure he could to discourage me from buying this timber, that we would be better buying clean timber. So, finally, I told him I was going ahead with it anyhow. Well, finally, he said he didn't want to be entirely let out and that he would like to be in some way associated with it. But as [11] far as handling it, I bought it and paid for it directly.

Q. Do you know how it happened the property was put up for sale?

A. The first time I don't remember, but it was put up two or three times. The first time that we bid on it, it was thrown out. They claimed there was some legal technicality. Then it was put up again, and we purchased it.

Q. Do you know how it happened the first sale was thrown out? From your own personal knowledge, do you know why it was?

A. No, I don't.

Q. Do you know from your own personal knowledge whether Mr. Wilson had anything to do with getting the county to sell this property?

Plaintiffs' Exhibit No. 9—(Continued)
(Deposition of Samuel A. Agnew.)

A. I don't think so, because Mr. Wilson wasn't in favor of it in any way, shape or form.

Q. Now, when you bought this timber, did you buy it for resale or manufacturing?

A. Manufacturing. At that time our people were pretty well cut out here, and as I remember it, they had about 18 months to run, and the plan at that time was to cut it out and move the mill to Curry County, Oregon.

Q. When did you obtain the mill at Klamath Falls or Klamath County?

A. I think we took possession July 1st, 1944. I am not positive on that. [12]

Q. Did Wilson have anything to do with your purchase of this mill?

A. Well, he suggested so many that I don't know, but the mill that he wanted us to purchase was the one Simpson let go of at Klamath, and he had a lease of the Klamath Cedar Company. I forget the name. They call it the Italian mill. That is the mill that Simpson has now, and then there was another one that I don't remember the name of.

Q. Now, in the purchase of this timber did you ever agree with Mr. Wilson that he would put up any money at all? A. No.

Q. Do you know from your own personal knowledge whether he did put up any money towards the purchase of any of this timber that you bought?

A. I am sure he didn't.

Plaintiffs' Exhibit No. 9—(Continued)

(Deposition of Samuel A. Agnew.)

Q. The drafts and checks that were used to pay for this timber—were they made out to Mr. Wilson?

A. We handled it in different ways. Some were made to him and some of them were made to the seller.

Q. Can you tell us what determined whether a check or draft was to be made out to Mr. Wilson or to the seller?

A. Yes, as he wanted it.

Q. As who wanted it? A. Mr. Wilson.

Q. Now, Mr. Agnew, was there ever a written agreement between [13] you and Mr. Wilson?

A. No, sir.

Q. Was there ever any definite oral agreement between the two of you?

A. Only as I have stated, that he would sell us the timber for certain prices.

Q. Now, was this agreement that he sell the timber to you and take his from the seller his suggestion or your suggestion, that it be handled that way?

A. His suggestion, and I think that was followed on each individual piece. As to the procedure covering it, there was nothing—in other words, we started with the Lobster Creek timber, that “I can sell you this for so much.” So we looked at it and had it check-cruised, and I told him we would take it. Then he said, “I am sorry, but I have given an option to a Chehalis bunch.” So he went to the Chehalis bunch and told them, so he said, if they

Plaintiffs' Exhibit No. 9—(Continued)

(Deposition of Samuel A. Agnew.)

were going to exercise their option they would have to do it right away, that he had another purchaser, and they took it.

Q. Now, he would come to you at different times then with pieces or tracts of lumber, is that correct?

A. Timber.

Q. Timber. And was it your understanding that each of these tracts of timber was a separate transaction? [14]

A. Absolutely.

Q. Have you at any time during the period that you knew Mr. Wilson and were purchasing these tracts of timber paid Mr. Wilson yourself—directly paid him?

A. Well, you will find a number of checks and drafts were made out to Mr. Wilson, but it was for a specific piece of timber.

Q. Did you pay him for any services that he rendered to you?

A. No, sir.

Q. And what did you consider Mr. Wilson's relationship to you, sir?

A. Well, selling timber to us.

Q. Now, did you make or have made an independent appraisal of each tract of timber that you were purchasing?

A. Well, we would go over it. That is, generally, our logging superintendent and cruiser would, and while we didn't cruise it all, we checked it all to find out whether we considered it worth the money or not.

Q. You say "logging superintendent." Did you

Plaintiffs' Exhibit No. 9—(Continued)

(Deposition of Samuel A. Agnew.)

have more than one logging superintendent during this period? A. No.

Q. What was the name of your logging superintendent at that time? A. P. R. Sherwood.

Q. Where does Mr. Sherwood live, sir? [15]

A. He is here in Centralia.

Q. Now, Mr. Agnew, I believe the record shows that there was a refund to you by Mr. Wilson of \$100,000 at one time, is that correct, sir?

A. Well, that was money that was put up that wasn't used.

Q. Now, can you describe just how this money was put up and under what circumstances it was put up?

A. Well, all that I can say is that it was put up to purchase a tract of timber, and the deal didn't go through.

Q. And that was all put up on one deal, is that right? A. Yes.

Q. Had this been paid to Mr. Wilson by one draft or several drafts?

A. As to that, I couldn't say. Sometimes there would be an overlapping. There would be in the offing two or three separate tracts.

Q. Mr. Agnew, do you have any personal knowledge of how Mr. Wilson held himself out to other lumber dealers? A. No, I don't.

Mr. Roberts: I believe that is all for the present.

(Recess.)

Plaintiffs' Exhibit No. 9—(Continued)
(Deposition of Samuel A. Agnew.)

Mr. Roberts: I have one further question.

Q. Mr. Agnew, at any time did Mr. Wilson suggest that your arrangement with him be put in writing?

A. No, sir, there never was any question about that. [16]

Mr. Roberts: I have nothing further.

Cross-Examination

By Mr. Wheelock:

Q. Mr. Agnew, as I understand it, you first met Mr. Wilson along in January, 1943?

A. That is as I remember it.

Q. And he was dealing with some property on Lobster Creek in Curry County at that time?

A. That is correct.

Q. And over that you were introduced to him as a prospective purchaser of that property?

A. That is correct.

Q. You went down with Sam Wilson, did you, to Curry County and went over the property?

A. I don't remember just where we met Mr. Wilson, but he went with us. That was the first trip, and he went down there and also a cruiser by the name of—it seems to me like it was Allen, but I am not sure.

Q. That transaction fell through because Mr. Wilson sold the property to these other people—to some syndicate in Chehalis?

Plaintiffs' Exhibit No. 9—(Continued)

(Deposition of Samuel A. Agnew.)

A. That is correct.

Q. And at that time did you own any other property in Curry County or Del Norte County, California, or Humboldt County, [17] California?

A. No, sir.

Q. Nothing else? A. No.

Q. And what was the first acquisition of property where you took title in the southern Oregon or northwestern California area?

A. Well, I don't remember. A lot of it was juggled around so—some of it was held by the bank. There was some on Muscle Creek. Do you remember, C. D.?

Mr. Cunningham: No, I don't.

Q. Was that the so-called Rutherford tract?

A. I don't think so.

Q. Was it before the time that you acquired the so-called county timber at that September sale of 1943? A. Yes, sir.

Q. It was prior to that?

A. Prior to that, yes, sir.

Q. And did Mr. Wilson introduce you to that first piece of property that you acquired?

A. Well, now, he gave me a description of it. That is as far as it went. I don't think he ever went with me.

Q. To the property itself?

A. To the property itself, no.

Q. You went down with your logging superintendent or some [18] cruiser and went through it?

Plaintiffs' Exhibit No. 9—(Continued)
(Deposition of Samuel A. Agnew.)

A. Yes.

Q. And then he handled the negotiations for the purchase of it? A. That is correct.

Q. And saw to it that the title was good and that the title insurance or abstract were issued and that the taxes were paid and so forth before the purchase price was paid?

A. That is correct.

Q. In other words, he handled the deal of making and closing the sale?

A. Well, the understanding was he would turn it over to us—turn over a good title once the price was agreed upon.

Q. Now, as I understand it, in August, 1943, Curry County put up a rather substantial amount of tax title property for sale, and you say originally Wilson was not particularly anxious that you make a deal with Curry County?

A. He was opposed to it. He didn't want anything to do with it. I think principally, of course, with our arrangement, he got his money from the seller, and, of course, on county timber there wasn't anything like that, and, also, the reason that he gave me was that the title was not satisfactory.

Q. Now, did you meet an attorney by the name of Kendall from Portland, Oregon, with relation to these various purchases [19] of property in Curry County?

A. The first time, when it thrown out, this at-

Plaintiffs' Exhibit No. 9—(Continued)

(Deposition of Samuel A. Agnew.)

torney, Mr. Kendall—I think they called him Judge Kendall——

Q. He at one time had been circuit judge in Coos and Curry Counties?

A. In the two counties.

Q. That judicial district comprised of Coos and Curry Counties?

A. That is correct. And there was an attorney down there by the name of Buffington who had quite a lot to say in Curry County affairs. So this Judge Kendall, as we called him, of course, was familiar with it. So he got him to go down, and he sort of represented us in the sale. In other words, he passed on the legality, as I remember it, and the first time it was thrown out on some technicality in advertising. In one instance Mr. Buffington objected, claiming it didn't give the individual purchasers the right to bid. Judge Kendall made the remark, "The county wants to get the money out of it, and they are not retailing it; they are wholesaling it. If the purchaser wants to sell it in small tracts, all right, but the county is not in that sort of business. They haven't the machinery set up for that."

Q. You say Sam Wilson introduced you to Judge Kendall?

A. That is right.

Q. And he employed Judge Kendall to pass on the legality of [20] this proposed sale of Curry County timber?

A. Well, I hired Judge Kendall and paid him.

Plaintiffs' Exhibit No. 9—(Continued)
(Deposition of Samuel A. Agnew.)

As far as Curry County timber was concerned, at no time did Mr. Wilson want anything to do with it any more than, as he said, he wanted to sit in on it. The rest of it Mr. Wilson handled, but not the Curry County timber.

Q. Did you attend at this first sale that was thrown out? A. Yes.

Q. You were there personally?

A. Yes, sir.

Q. Could it be a fact, Mr. Agnew, that you didn't even attend at the first sale?

A. Well, now, I don't know what you mean by the "first sale."

Q. The first sale in August when that was thrown out. A. I attended two sales.

Q. You were there in person?

A. Yes, sir.

Q. Was Mr. Wilson there? A. I think so.

Q. Did you bid at the first sale?

A. I think so. The question came up right at the start, and we were wrangling back and forth. I know we had the figure I was going to bid, but I am not clear on it.

Q. Now, at the second sale, did Mr. Wilson attend the sale? A. Yes, sir. [21]

Q. Who bid for this county timber?

A. That I don't remember.

Q. Did Mr. Wilson bid for you?

A. Well, I don't know whether he did or whether I did. I don't remember on that. Mr. Wilson stated he wanted to establish himself there, and at that

Plaintiffs' Exhibit No. 9—(Continued)

(Deposition of Samuel A. Agnew.)

time, as I remember it, he intended to open an office in Gold Beach, but I don't think he did, and he did later open an office in Eureka.

Q. Now, to refresh your memory, Mr. Agnew, do you recall when you were called as an adverse witness in the trial of these cases down in Del Norte County at Crescent City and you were being examined by Mr. Malloy, who was Sam Wilson's attorney?

A. Yes, sir.

Q. And Mr. Malloy asked you this question: "Did you attend the first sale"——

Mr. Roberts: What page?

Mr. Wheelock: This is on page 55.

Q. (Reading): "Did you attend the first sale in 1943? Answer: I was there but not in the room. Question: You were not present at the sale? Answer: No, no."

A. Well, as I remember it, there were other sales. Now, if we are speaking about the sale—I didn't know I wasn't there when they had it, but I am quite sure of the two last [22] sales. I don't understand that because I certainly intended to be there. If there was any bidding for me, I certainly was there.

Q. Now, you acquired this timber at this sale in September, 1943, from Curry County?

A. I think so.

Q. Who handled the closing with Curry County of that transaction?

A. That I couldn't say. There was some changing around. We traded some with the Evans Prod-

Plaintiffs' Exhibit No. 9—(Continued)

(Deposition of Samuel A. Agnew.)

ucts Company. We traded Port Orford cedar on Hunters Creek for fir, but just how the closing of it was, I don't know.

Q. Did Mr. Wilson aid and assist in closing it?

A. I think so.

Q. Now, did you purchase any further timber after this sale in September, 1943, from Curry County?

A. I think so.

Q. Who negotiated those sales?

A. Well, there were one or two pieces that I talked to the commissioners there personally about, but just how the ultimate deal was made, I don't remember.

Q. Was Mr. Wilson aiding and assisting in the consummation of those transactions?

A. Well, as I stated in the first place, he said he would like to sit in on it on account of the prestige. He would [23] like to be associated for that reason, but he still objected to it and didn't want any part in it other than that he was willing to assist. And at that time it was when he said he was going to open an office in Gold Beach and establish—just what I don't know, whether as a broker or what. That I couldn't say.

Q. Well, there were some purchases made in March of 1944—one transaction in Township 33, where the total consideration bid was \$2,044.80. Do you recall that transaction?

A. I don't remember.

Q. Wilson was down in that area of the country most all the time at that time, was he not?

Plaintiffs' Exhibit No. 9—(Continued)

(Deposition of Samuel A. Agnew.)

A. Well, he was back and forth from Frisco. It seems to me like he was living down there some, but I am not sure on that. I think he lived at Redwood City or some place down there.

Q. You had a transaction on Township 33 and another one on Township 38 and another one on Township 36 in the winter and spring of 1944—three separate transactions. Did Mr. Wilson help to negotiate those transactions with Curry County?

A. On that, I don't know. After this, the group, that is, the larger bunch—I made a sort of broad application that anything that they had that was for sale, if they would let me know, I would be glad to examine it, and so [24] long as we were in there, I would like to purchase as much as we could. But how it was really worked out, I couldn't say. It is a long time ago, and I was working between the two places.

Q. Now, what was the last transaction that you had on the acquisition of timber which Sam Wilson aided in the negotiations and closing of?

A. I think it was the Gilbert Thorp timber.

Q. Do you remember the date of that transaction or the approximate date?

A. No, because Mr. Wilson held that out. He just didn't turn it over.

Q. Was that transaction before or after the purchase of the Bankus tract?

A. I couldn't say. I was thinking the Gilbert Thorp was the last, but I am not sure.

Plaintiffs' Exhibit No. 9—(Continued)
(Deposition of Samuel A. Agnew.)

Q. Do you have any recollection as to when the Bankus tract was closed?

A. No, I don't. The records will probably show, but I don't remember.

Q. Was that in 1945 or 1946?

A. I couldn't say. I don't remember.

Q. Do you have the drafts and checks that would be evidence of the date of the closing of that transaction?

A. Of the Bankus? [25]

Q. Yes.

A. I think so.

Q. Would your books and records disclose the date of the closing of that transaction?

A. I think we had that all at the time of the trial. I don't remember, but it would certainly be in the record.

Q. Do you recall a transaction for the Powrie timber?

A. Well, there was a lot of fussing around about it, but, as I remember it, we didn't purchase it.

Q. It didn't go through. But Mr. Wilson, at the time of all that fussing around, was still in this arrangement, whatever it was?

A. Well, there wasn't any arrangement.

Q. He offered this timber to you, and you attempted to buy it, but the deal didn't go through, is that right?

A. Well, I would judge that was it because that was the way that we handled transactions.

Q. Do you recall the approximate date of that?

A. No; there was so many of them coming up

Plaintiffs' Exhibit No. 9—(Continued)

(Deposition of Samuel A. Agnew.)

that never materialized. I would say that 50 per cent of them never went through. So it is confusing to try to remember back that far. I don't remember.

Q. Was that before or after the Gilbert Thorp transaction?

A. That I couldn't say. When you speak about the Gilbert Thorp, is that the one that was actually closed and we got [26] the deed? I don't quite get it.

Q. The Gilbert Thorp tract was the one where the title went to Wilson——

A. Yes.

Q. ——and that was the one in this settlement that you made with Wilson that you got the title back?

A. You see, sometimes Wilson would have the deed made out in his name, and he would transfer it to us, and sometimes they were made direct. Each one was separate, and we never knew what they were going to be until the thing was finally wound up.

Q. Would you say that the Powrie transaction that fell through—that the negotiations were in May, 1946?

A. Oh, I wouldn't attempt to say.

Q. Would you have any record from which you could determine the approximate date?

A. I doubt it very much. In fact, I don't remember anything of the Powrie deal. I couldn't say. I was still negotiating with Mr. Powrie when he died.

Plaintiffs' Exhibit No. 9—(Continued)
(Deposition of Samuel A. Agnew.)

Q. Did Wilson introduce you to Mr. Powrie?

A. No; I met Mr. Powrie. We both had a weakness; we had some thoroughbred horses, and we would discuss some of the horses.

Q. Wilson was negotiating, though, with Powrie for this timber? [27]

A. That I couldn't say. I don't remember enough about it to know. On several occasions he would say, "I am working with so-and-so for so-and-so," and if he was, I didn't pay any attention to it.

Q. When was the last time, to your recollection, that Wilson offered or attempted to negotiate for timber which would vest in you which you would purchase?

A. Well, I don't know, but, as I remember it, the Gilbert Thorp and the Bankus—I thought they were the two last pieces. I am not sure. The Gilbert Thorp was hanging fire a long time and also the Bankus.

Q. Well, with relation to the time that the first case was filed down in Crescent City, how long before that? A. I don't know.

Q. In Cause No. 3801 in the Superior Court of California in and for the County of Del Norte wherein you and Mr. King were plaintiffs and the defendants were Samuel J. Wilson and Jane Doe Wilson, his wife, and John Doe and Richard Roe in relation to the Gilbert Thorp tract, do you recall that case? A. No.

Plaintiffs' Exhibit No. 9—(Continued)

(Deposition of Samuel A. Agnew.)

Q. Did you bring a suit against Sam Wilson on the Gilbert Thorp tract to determine that he was holding the title to this property as trustee for you?

A. I don't remember. [28]

Q. You don't remember? A. No.

Q. Was Irving T. Quinn your lawyer?

A. Well, he represented us down there.

Q. Did you institute a suit against Mr. Wilson with relation to the Loft Hotel?

A. That I don't know.

Q. Did you have any negotiations with Sam Wilson wherein and whereby you and he were joint venturers in the acquisition of the Loft Hotel property and the proceeds to be gained from the sale of it?

A. Not the Loft Hotel. I think Wilson bought it. He wanted some money, and I think I put up some money for a percentage of the stock, but the details I don't remember.

Q. You did have a joint venture arrangement where you put up money and when you sold you were both going to divide the profit on the Loft Hotel?

A. It wasn't on a sale. It was a proposition that he was going to operate it.

Q. When he sold it, did you sue him to get a part of the profits?

A. That I don't know. But he had said the hotel made money, and if it did, it was probably to re-

Plaintiffs' Exhibit No. 9—(Continued)
(Deposition of Samuel A. Agnew.)

cover what money I put in. I couldn't say. I don't remember.

Q. Now, you were in attendance in the courtroom down in Crescent [29] City at the time this case was first started for trial and Mr. Quinn was your lawyer? A. Well, he was one of them.

Q. And Mr. Collier Buffington was one of your attorneys? A. Yes.

Q. And Mr. Cunningham here? A. Yes.

Q. He is your regular attorney?

A. Yes, sir.

Q. Was Mr. Quinn the attorney who was going to actually try the case down there—do the actual trial work? A. As to that I couldn't say.

Q. What was the prime issue to be tried in that case—in those cases? A. I couldn't tell you.

Q. Was the question that you were there to determine whether or not there was a joint venture between you and Sam Wilson?

A. Well, there was never anything for me to——

Q. Just a minute. Answer the question. Was the thing you were there to try in Judge Finley's court in Crescent City whether there was or was not a joint venture between you and Sam Wilson?

A. That I couldn't say.

Q. You don't recall the issue they were there to try in that [30] case?

A. No, I don't remember what it was.

Q. Well, what were you doing there in court?

Plaintiffs' Exhibit No. 9—(Continued)

(Deposition of Samuel A. Agnew.)

A. I couldn't say, and I don't even remember who was the plaintiffs.

Q. There were three cases, weren't there, or were there?

A. Well, that I couldn't say. There was a lot of them.

Mr. Wheelock: I think that is all.

Redirect Examination

By Mr. Roberts:

Q. Mr. Agnew, is it the general practice in the timber business for the brokers ever to be paid by the seller of a tract of timber?

A. Oh, I couldn't say on that. I think that is usually private trading.

Q. Have you had other dealings in which the seller paid the broker's fee? A. Yes.

Q. Now, on this county tax sale timber, were you always present if Wilson did any bidding for you?

A. Well, unless he did it without my knowledge.

Q. Now, was his bidding for you done at his request or your request?

A. Well, I couldn't say in regard to that. But the whole [31] thing was that I would decide what we would pay, and that was my position and I would pay no more. Now, whether Mr. Wilson did bid or not, I couldn't say. I don't remember.

Plaintiffs' Exhibit No. 9—(Continued)
(Deposition of Samuel A. Agnew.)

Q. If he did any bidding for you, was it done at his request or did you request him to bid for you?

A. Well, so far as the Curry County stuff was concerned, he—I will put it this way: He wanted to be in on it. He was opposed to it right to the last. The last words I think he said were we would have trouble over the title, but he wanted "to be in on it," as he put it. That is, he wanted to be in on the talk for the reason he was going to establish an office in Gold Beach. That seemed to be his main interest, but he never was interested in the county timber.

Q. Now, you stated on your cross-examination that you had requested that the county notify you if they had any timber tracts for sale and that they would do so. Now, how would they notify you? Was it by direct mail or through Wilson?

A. Well, I was generally in there every week. They told me to talk it over with them and asked if I had seen it after it was put up.

Q. During this period from, I believe it was 1943, until you finally broke up, how often would you see Mr. Wilson?

A. Oh, that is pretty hard to say. He had a number of schemes, and I don't suppose—not only of timber but other [32] things, and I don't think over ten per cent of them ever materialized.

Q. Would you see him once a week or once a month, or can you give us any idea how often?

Plaintiffs' Exhibit No. 9—(Continued)

(Deposition of Samuel A. Agnew.)

A. Generally, whenever he would take a notion to submit something.

Q. During the majority of the time, would he come to Centralia to see you?

A. Generally Klamath.

Q. Klamath. How much time would you say you spent at Klamath?

A. Oh, I tried to go down there once a week. Sometimes I didn't make it. Sometimes it was more. Generally, I planned to leave here Sunday morning and go down and be there two or three days and be back Tuesday or Wednesday night. I couldn't say.

Q. Now, when your difficulty with Mr. Wilson arose, did Mr. Cunningham send you to Mr. Quinn, or did you seek out Mr. Quinn on your own?

A. I don't think Mr. Cunningham sent me to him, but I don't know how I did contact him first.

Q. Now, were these suits brought actually by Mr. Quinn?

A. That I couldn't say. Of course, Mr. Cunningham was here in Washington, and there were a number of things that required—at least it looked like the best thing was to have someone who was familiar with California law, and he [33] had residence there. That is the only reason I can say. I tried to get Mr. Cunningham to handle it all, but it was too long or too far away.

Q. Now, did you ever request that Mr. Wilson locate any particular tracts of timber for you?

A. Not to my knowledge.

Plaintiffs' Exhibit No. 9—(Continued)
(Deposition of Samuel A. Agnew.)

Q. Did you ever pay any of Mr. Wilson's traveling expenses? A. No, sir.

Q. Did you ever pay any of his office expenses?
A. No, sir.

Q. Now, in any of these deals in which Mr. Wilson was associated, in purchasing from Wilson, did you accept his judgment as to the quantity or quality of the timber?

A. No, Mr. Wilson didn't claim to know that. No, we relied on our own judgment absolutely.

Q. He would then merely find the timber, is that correct, sir? A. Yes.

Q. Did you ever accept his judgment as to title?
A. No.

Mr. Roberts: I have nothing further.

Recross-Examination

By Mr. Duffy:

Q. Mr. Agnew, I understand you had correspondence with Mr. Wilson from time to time during this period. He would [34] write to you and you would write to him?

A. He would write to me. I don't know that I ever answered one of them.

Q. Where would that correspondence be now?

A. I couldn't say. There may be some of it here. I think probably what was considered of any materiality was in the case. It probably was with the other documents at the time of the trial, but that I couldn't say for sure. I don't know.

Plaintiffs' Exhibit No. 9—(Continued)

(Deposition of Samuel A. Agnew.)

Mr. Roberts: May I interrupt off the record?

(Discussion off the record.)

Q. Mr. Agnew, you entered into this settlement of these lawsuits on November 14, 1949. The record shows that was when the stipulation was signed. Was it during the year 1949 or was it later on during 1950 when these properties were conveyed back and forth between you and Mr. Wilson?

A. That I couldn't say. I got so disgusted I didn't want to have anything to do with it. You can blame the attorneys for all that.

Q. How did you treat these amounts that you paid Mr. Wilson in settlement of these lawsuits? How did you treat them in your own income tax return?

A. As far as on the income tax return, there was so much timber that was bought. A certain amount went to Mr. Wilson, and the balance remained with us. That is all [35] I can say.

Q. You didn't claim any deduction on your return for any compensation for his personal services? A. No, sir.

Q. What was the answer? A. No, sir.

Mr. Duffy: I believe that is all I have.

Plaintiffs' Exhibit No. 9—(Continued)
(Deposition of Samuel A. Agnew.)

Recross-Examination
(Resumed)

By Mr. Wheelock:

Q. When you first were acquainted with Wilson in 1943, was he a licensed broker of timber?

A. He told me he wasn't. That is all. I couldn't say.

Q. Do you, of your own knowledge, know if he was ever a licensed broker? A. I do not.

Q. You stated on your direct examination that he would find a piece of timber that he thought you might be interested in?

A. I will put it this way: He got wind of it, and whether it was in a hotel lobby or where it was, that I don't know. Then, as I said to start with, he would tell me about it, but he wouldn't even have the description. I said, "There is no use trying to do anything about it without getting the description." So he would get the description. Then [36] we would go and examine it. That is as simply as I can put it.

Q. After you had gone and looked at the timber, would you generally contact Wilson and if you were interested in it talk about the price you thought you should pay for it?

A. No, generally, he said, "I can sell you this for so much money," and then if we thought it was all right, we said so, and if not, we would make an offer.

Plaintiffs' Exhibit No. 9—(Continued)

(Deposition of Samuel A. Agnew.)

Q. And he would negotiate with the people who had title to it?

A. That I couldn't say. Sometimes it was done right there. Sometimes he was high, and sometimes he was low.

Q. And if you arrived at a price that was satisfactory, would he generally attend to the closing of the transaction?

A. That is right. If he said, "Send John Jones a check or draft for so much money and put it in the bank," so far as we were concerned, that was all there was to it. How he and Jones handled it, I don't know.

Q. And you had full faith and confidence that when he said, "I can buy it for so much money. Send the money," that you would get what you were after or you would get your money back?

A. That is right.

Q. And during all this time you never paid him any compensation of any type or nature for any of these transactions?

A. No, unless it was in the purchase price where I wouldn't [37] know it.

Q. And you never paid him any expenses for traveling or motels or hotel rooms or anything of that nature?

A. No, sir.

Q. Would he at any time ever advance any money as earnest money or a down payment on one of these transactions?

A. That I wouldn't know of. He would ask for

Plaintiffs' Exhibit No. 9—(Continued)

(Deposition of Samuel A. Agnew.)

it sometimes, and sometimes he wouldn't. That was one thing that was pretty much mixed up. He would put it up and think he could make the deal, but it wouldn't go through. When we started down there to start with, the plan was to buy it in the name of the Eastern Railway & Lumber Company. Right off the bat they said, "No corporation. There have been too many corporations, and we don't know who we are dealing with." So that was why it was bought in the name of S. A. Agnew.

Q. You know of no other transactions he was involved in with relation to timber than those where the titles were taken by you that Sam Wilson negotiated during this period of time?

A. Well, there was the Lobster Creek and one other. Then that was finally consummated——

Q. Yes.

A. ——and the one he bought for his wife. Other than those three, I don't remember. [38]

Q. To refresh your memory, didn't he acquire in his own individual name the title to some property in Township 36 of Curry County where the title was not merchantable? Is that the timber you are talking about for his wife?

A. No, I don't remember that. That is, I don't remember a question like that coming up.

Q. That was ultimately sold to the Double O Lumber Company at Gold Beach?

A. I don't remember.

Q. Do you remember a transaction where the

Plaintiffs' Exhibit No. 9—(Continued)

(Deposition of Samuel A. Agnew.)

titles could not be made good that you couldn't go through with? A. No, I don't.

Q. The Clutter tract?

A. I think we got the Clutter tract. Whether Wilson bought it individually or not, I don't know. I had forgotten all about it, but since you mention it—there was something there. I don't know what it was now.

Mr. Wheelock: I think that is all.

Mr. Duffy: May I suggest the deposition be continued until such time as these documents which were required by the subpoena duces tecum are produced or those which are still available are produced?

Mr. Bowden: May I suggest we complete the deposition and then at whatever convenient time after you get the documents we take another deposition at your request or [39] the government's request?

Mr. Duffy: I think we should just continue it.

Mr. Winter: I don't see how we can continue this. I think we should take another one after these documents are produced. We will see if there is anything that he can produce. If he says he hasn't anything, I think he has answered the subpoena. I think we ought to take another one. It would be simpler to get out another notice if we find they can find anything. They say that they don't know if they can find anything.

Mr. Duffy: I think the plaintiffs in this case will

Plaintiffs' Exhibit No. 9—(Continued)

(Deposition of Samuel A. Agnew.)

record their objection to the failure to continue this deposition until the documents which were required by the subpoena duces tecum are produced.

Mr. Roberts: As a matter of procedure, I don't know that it makes much difference whether the deposition is continued or a new one taken. I would presume you are going to want to go over these documents that are produced and from them you will determine whether or not you want to re-examine Mr. Agnew.

Mr. Duffy: Either re-examine or examine initially on matters that have not been covered.

Mr. Roberts: Yes, I understand that. Therefore, I think we are allowed to go away beyond the scope of the testimony today after it is decided whether anything [40] should be done after examination of these documents. I think, therefore, probably the better procedure would be to close it for now, and if we decide on taking further testimony, then do it at that time. It is purely a question of procedure, and, as I see it, it doesn't make any difference whether we decide, say, two months from now, that we will reopen it or set it down now two weeks from today. It is merely a question of procedure. It is going to be just the same as if we took another deposition.

Mr. Duffy: We have stated our position for the record.

Mr. Winter: Have you produced all the documents you can produce at the time set?

Plaintiffs' Exhibit No. 9—(Continued)

(Deposition of Samuel A. Agnew.)

Mr. Cunningham: Yes.

Mr. Winter: And you are going to try to find more if you can?

The Witness: That is the attorney's job, you know.

Mr. Winter: You don't have any more?

Mr. Cunningham: If you will tell me what you want—there is no use telling Mr. Agnew because I would have to do it anyway and check them out, and I will check it with Mr. Quinn down there. I understand his health is such——

Mr. Wheelock: I don't think he is practicing.

(Discussion off the record during which each of respective counsel and witness expressly waive right [41] of witness to read and sign foregoing transcript of his oral examination.)

(Witness excused.)

Certificate

State of Washington,
County of King—ss.

I do hereby certify that on the 28th day of June, 1955, at the hour of 10:00 o'clock a.m., at the office of S. A. Agnew Lumber Company, Centralia, Washington, personally appeared Samuel A. Agnew, called for oral examination before trial at the instance of the defendant;

Plaintiffs' Exhibit No. 9—(Continued)

C. E. Wheelock, Esq., and Charles P. Duffy, Esq., attorneys at law, appearing for and on behalf of plaintiffs;

Richard M. Roberts, Esq., and Allen A. Bowden, Esq., Special Assistants to the Attorney General, and Thomas R. Winter, Esq., Special Assistant to the Regional Counsel for the Internal Revenue Service, appearing for and on behalf of defendant;

C. D. Cunningham, Esq., attorney at law, appearing for and on behalf of Samuel A. Agnew;

And the said witness having been by me first duly sworn to testify the truth, the whole truth and nothing but [42] the truth in said cause, answered and deposed as appears in his oral examination hereinbefore annexed;

I further certify that the said oral examination was then and there taken down in shorthand by me, a competent shorthand reporter and a disinterested person, and thereafter reduced to typewriting by me or under my personal supervision;

I further certify that the foregoing transcript of such pretrial oral examination is a full, true and correct transcription of all the testimony of said witness, including questions, answers, statements and objections by counsel;

I further certify that the reading over by or to the witness of his said pretrial oral examination and his subscription thereto were by counsel and by the witness expressly waived; and

Lastly, I certify that I am not employed by nor related to any of the parties to said action or their

Plaintiffs' Exhibit No. 9—(Continued)

respective counsel, and am not financially interested in the event of the action.

In Witness Whereof, I have hereunto set my hand and affixed my notarial seal this 30th day of July, 1955.

[Seal] /s/ JAMES P. ROYSE,
Notary Public in and for the State of Washington,
Residing at Seattle.

Received in evidence, October 25, 1955. [43]

DEFENDANT'S EXHIBIT B

In the Superior Court of the State of California
in and for the County of Del Norte

No. 4111-P

In the Matter of

The Estate of SAM J. WILSON, Deceased.

ORDER CONFIRMING SALE OF REAL
ESTATE ON BID IN OPEN COURT

The return of the Anglo-California National Bank of San Francisco Administrator with the Will Annexed of the Estate of Sam J. Wilson, also known as Samuel J. Wilson, Deceased, setting forth its proceedings upon the sale of certain real property of said Estate in said return and hereinafter

particularly described, came on regularly to be heard this day of the 27th day of April, 1951.

It is proved to the satisfaction of the Court, and the Court finds:

The time for hearing said return was regularly set by the Clerk for this day; that notice of the time and place of said hearing has been regularly given for the period, and in the manner required by Section 1200, Probate Code;

That said Administrator with the Will Annexed gave notice of the said sale as prescribed by the Probate Code; that at such sale, regularly held on the 12th day of April, 1951, the said real property was sold to M. & M. Woodworking Company for the sum of \$450,000.00 cash, it being the highest and best bidder, and said sum being the highest and best bid; that the said sum so offered is more than 90% of the appraised value of the said property; that there is reason for the sale upon the grounds that the funds, and the income of said Estate are insufficient to pay the debts, expenses, taxes and charges of Administration, and for the further reason that the timber growing on said property is mature and should be cut, and the said property is of a sufficient value to produce for the Estate the necessary cash required as aforesaid and is less likely to enhance in value than any other property of said Estate, and upon the further grounds that it is for the advantage, benefit and best interest of the said Estate, that the said real Estate be sold; that said sale was legally made and fairly conducted; that said property was appraised

within one year of the time of such a sale; that the sum bid is not disproportionate to the value of the property sold;

Whereupon, in open Court, Humboldt Plywood Corporation, offered the sum of \$620,000.00 for the said property, which sum is in excess of 10% on the first \$10,000.00 bid and 5% on the amount of the bid in excess of \$10,000.00 more in amount than that named in said return, and the said Humboldt Plywood Corporation being responsible parties, and said bid complies with all provisions of the law, and no higher offer being made, the Court accepts the said offer and sells the said land to the said Humboldt Plywood Corporation accordingly;

It Is Therefore Ordered, Adjudged and Decreed, that the sale of said land so made in open Court to the said Humboldt Plywood Corporation, for the sum of \$620,000.00 payable as follows, to wit: \$75,000.00 upon the entry of this order, \$225,000.00 within 15 days from the date hereof; the balance of \$320,000.00 in three equal annual installments commencing the 1st day of May, 1952, together with interest thereon at the rate of 4½% per annum, said balance to be evidenced by a promissory note secured by a Deed of Trust on the hereinafter described real property, be and the same is hereby confirmed, and upon payment of the \$300,000.00 provided herein and the execution of the said Note and Deed of Trust and compliance with the terms of the sale, as aforesaid by the said purchasers, the said Anglo-California National Bank of San Francisco as Administrator with the Will

Annexed of said Estate, execute to said Purchaser a Deed conveying the said land, which is described as follows, to wit:

The South half of the Southeast Quarter, and Southeast Quarter of Southwest Quarter of Section 8;

The South half of South half of Section 9;

The entire Section 17 except the Southeast Quarter of Southeast Quarter thereof;

The East half of the Southeast Quarter of Section 18;

The West half of Northeast Quarter, and Northeast Quarter of Section 19;

The Northwest Quarter of Northwest Quarter, Southeast Quarter of Southwest Quarter, and South half of Southeast Quarter of Section 20;

The Northeast Quarter of Northeast Quarter, West half of Northeast Quarter, and East half of Northwest Quarter of Section 29;

All in Township 9 North of Range 3 East, Humboldt Meridian; all in the County of Humboldt, State of California.

Done in Open Court this 27th day of April, 1951.

SAMUEL F. FINLEY,

Judge of the Superior Court.

Certified true copy.

[Endorsed]: Filed April 27, 1951.

Received in evidence October 25, 1955.

DEFENDANT'S EXHIBIT D

827 Northeast Oregon Street
Portland 14, Oregon

July 14, 1954.

Ap-P:AA:MHB
90D-CAD

Estate of Sam J. Wilson, Deceased,
The United States National Bank of Portland,
(Oregon), Executor, and
Mrs. Jessie Wilson,
The United States National Bank of Portland,
(Oregon), Portland Oregon.

Dear Sirs and Madam:

You are advised that the determination of the income tax liability of the decedent and yourself, the surviving spouse, for the taxable year ended December 31, 1949, discloses a deficiency of \$361,-852.06, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days from the date of the mailing of this letter you may file a petition with the Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiency. In counting the 90 days you may not exclude any day unless the 90th day is a Saturday, Sunday, or legal holiday in the District of Colum-

Defendant's Exhibit D—(Continued)

bia, in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays, and legal holidays are to be counted in computing the 90-day period.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to Assistant Regional Commissioner, Appellate, 827 Northeast Oregon Street, Portland 14, Oregon. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates 30 days after receipt of the form, or on the date of assessment, or on the date of payment, whichever is earlier.

Very truly yours,

T. COLEMAN ANDREWS,
Commissioner of Internal
Revenue;

By /s/ A. N. WILLIAMS,
Associate Chief, Appellate
Division.

Enclosures:

Statement

Form 1276

Agreement Form

Defendant's Exhibit D—(Continued)

Ap-P:AA:MHB

90D:CAD

Statement

Estate of Sam J. Wilson, Deceased

The United States National Bank of Portland (Oregon),

Executor, and Mrs. Jessie Wilson, surviving wife

The United States National Bank of Portland (Oregon)

Portland, Oregon

Income tax liability for the taxable years ended December 31, 1949, and December 31, 1950.

Year	Deficiency	Overassessment
1949	\$361,852.06	
1950		\$ 16,789.84

In making this determination of income tax liability of the decedent and yourself, the surviving spouse, careful consideration has been given to the reports of examination dated January 11, 1952; to the protests dated May 27, 1952; to the statements made at the conferences held on January 16, February 24, and December 11, 1953; and to the claim for refund filed for the year 1950 on December 13, 1951.

The overassessment shown herein should not be regarded as finally determined. When final determination has been made, the overassessment to the extent of the amount allowable will be made the subject of a certificate of overassessment, which will reach you in due course through the office of the District Director of Internal Revenue for your district, and will be applied by that official in accordance with section 322(a) of the Internal Revenue Code, provided that you have fully protected yourself against the running of the statute of limitations with respect to the apparent overassessment referred to in this letter by filing with the District Director of Internal Revenue for your district a timely claim for refund on Form 843.

A copy of this letter and statement has been mailed to your representative, Mr. Carl E. Davidson, 1525 Yeon Building, Portland, Oregon, in accordance with the authority contained in the power of attorney executed by you.

Defendant's Exhibit D—(Continued)

Year ended December 31, 1949

Adjustments to Net Income

Net income (loss) disclosed by return (Form 1040)		\$(9,321.82)
Unallowable deductions and additional income:		
(a) Compensation	\$502,176.85	
(b) Settlement income	25,000.00	
(c) Net loss from sale of property other than capital assets	1,968.78	
(d) Medical expenses	738.20	529,883.83
		<hr/>
Nontaxable income and additional de- ductions:		
(e) Net gain from sale of capital assets	9,844.16	
(f) Net operating loss deduction ..	8,051.28	17,895.44
		<hr/>
Net income adjusted		<u>\$502,666.57</u>

Explanation of Adjustments

(a) In the year 1949 the decedent received a 70 per cent interest in certain timberland as an out-of-court settlement of a suit between Sam J. Wilson and Samuel A. Agnew. The property was received as compensation for services performed and, in accordance with Sec. 29.22(a)-3, Regulations 111, represents taxable income to the extent of its fair market value. The value of the property transferred by Agnew has been determined to be \$717,395.50 of which the decedent's interest was 70 per cent or \$502,176.85.

(b) In the year 1946 Samuel A. Agnew forwarded to the decedent the sum of \$25,000.00 for the purchase of certain timber and timberland designated as the Powrie deal. The property was not purchased but the decedent retained the cash advanced. The out-of-town settlement in 1949 provided that the decedent would retain the cash advanced. Since Agnew agreed in 1949 to the retention of the cash by the decedent, the amount represents taxable income in 1949.

Defendant's Exhibit D—(Continued)

(c) In the year 1949 the decedent reported that he had received certain assets in liquidation of a joint venture and that the cash withdrawals amounted to \$54,700.00 whereas the cash paid in amounted to \$36,180.46. The excess of \$18,519.54 the decedent treated as a long-term capital gain. He also reported as a long-term capital gain the profit resulting from the collection of an installment obligation. The obligation resulted from the sale of real property known as Patrick Creek Lodge and the gain on the collection for the year 1949 amounted to \$1,968.78. He also claimed as a deduction the amount of \$1,400.00 which was stated to be a non-business bad debt and, therefore, deductible as a short-term capital loss. In addition, the decedent reported a loss of \$4,408.61 resulting from the sale of a log pond.

The reported net capital gain and the ordinary loss were as follows:

Long-term capital gains:

Dissolution of joint venture	\$ 18,519.54
Installment sale collection	1,968.78
	<hr/>
Net long-term gain	\$ 20,488.32
	<hr/> <hr/>
Fifty per cent	\$ 10,244.16
Short-term capital loss	1,400.00
	<hr/>
Net gain from sale of capital assets	\$ 8,844.16
	<hr/> <hr/>
Loss from sale of log pond	\$ 4,408.61
	<hr/> <hr/>

It has been determined that the decedent was not a joint adventurer with Samuel A. Agnew and that the reported gain, \$18,519.54, was not realized. Furthermore, in accordance with section 117(j), Internal Revenue Code, the gain on the sale of the Patrick Creek Lodge property must be applied against the loss sustained on the sale of the real estate used as a log pond. The deduction for the net short-term capital loss is limited by section 117(d), Internal Revenue Code, to \$1,000.00. In accordance with the above, the net loss on the sale or exchange of

Defendant's Exhibit D—(Continued)

property other than capital assets is reduced to \$2,439.83 and the net loss from the sale or exchange of capital assets, as provided by section 117(d), Internal Revenue Code, is limited to \$1,000.00.

(d) The amount of \$738.20, represented in the return of the decedent and yourself, the surviving spouse, as medical expenses, is disallowed since such expense does not exceed 5 per cent of the adjusted gross income.

(e) For details of adjustment, see item (c), above.

(f) As a result of a net operating loss for the year 1950, a net operating loss deduction is allowable for the year 1949, computed as follows:

Net loss for 1950 as determined		\$ 13,668.54
Long-term capital gain—section 117(j) at 100 per cent:		
Installment obligations	\$ 19,191.86	
Sale of stumpage	17,911.40	
	<hr/>	
	\$ 37,103.26	
Less: Loss of 15 per cent interest on timber at 100 per cent	32,486.00	
	<hr/>	
	\$ 4,617.26	
Disallowance of capital loss in 1949..	1,000.00	5,617.26
	<hr/>	
Net operating loss deduction..		\$ 8,051.28

Computation of Tax

Net income adjusted	\$502,666.57
Less exemptions	1,200.00
	<hr/>
Income subject to tentative tax	\$501,466.57
One-half of such income	250,733.29
Tentative tax	202,987.29
Tax reduction—\$12,020.00 plus 9.75 per cent of \$102,987.29	22,061.26
	<hr/>
Balance of tentative tax	\$180,926.03

Defendant's Exhibit D—(Continued)

Income tax liability—		
\$180,926.03 times 2		\$361,852.06
Liability disclosed by return		
Original account No. 8621724		None
Deficiency in income tax		\$361,852.06

Year Ended December 31, 1950

Adjustments to Net Income

Net income disclosed by original return		
(Form 1040)		\$ 45,924.63
Unallowable deductions and additional income:		
(a) Legal fee		4,000.00
Total		\$ 49,924.63
Nontaxable income and additional deductions:		
(b) Capital gain		63,593.17
Net loss adjusted		\$(13,668.54)

Explanation of Adjustments

(a) The net income of the decedent and yourself, the surviving spouse, as reported in the return, is increased by the amount of \$4,000.00, representing a legal fee deducted in error.

(b) For the year 1950 you reported a net gain of \$127,186.33 on the sale or exchange of capital assets held for more than six months. This gain you computed as follows:

Interest sold to B. F. Howser	\$ 16,500.00	
Cost	0.00	\$ 16,500.00
Sale of stumpage	\$ 89,557.02	
Cost	0.00	89,557.02
Installment sales collections:		
Patrick Creek Lodge	\$ 2,031.15	
Double O Lumber Co.	19,098.16	21,129.31
Total		\$127,186.33

Defendant's Exhibit D—(Continued)

Year Ended December 31, 1950

Explanation of Adjustments (Continued)

It has been determined that the basis of the interest in timber sold to Howser and the timber sold as stumpage are the fair market values at the date of the settlement of the litigation. Those values are as follows:

Interest sold to Howser	\$ 48,986.00
Stumpage	71,645.62
	<hr/>
	\$120,631.62
	<hr/> <hr/>

Since the interest sold to B. F. Howser was acquired on November 14, 1949, and sold on May 9, 1950, the property was held for less than six months and the loss is held to be a short-term capital loss. The stumpage was held for a period of more than six months and, in accordance with section 117(k)(2), Internal Revenue Code, is considered to be a long-term capital gain. In accordance with the above, the net capital loss is computed as follows:

Interest sold to Howser	\$ 16,500.00	
Cost or other basis	48,986.00	
	<hr/>	
Short-term capital loss		\$ 32,486.00
		<hr/> <hr/>
Sale of stumpage	\$ 89,557.02	
Cost or other basis	71,645.62	
	<hr/>	
Long-term capital gain		\$ 17,911.40
Installment sales collections:		
Patrick Creek Lodge	\$ 2,031.15	
Double O Lumber Co., as now determined	17,160.71	19,191.86
	<hr/>	<hr/>
		\$ 37,103.26
		<hr/> <hr/>
Fifty per cent		\$ 18,551.63
		<hr/> <hr/>
Net capital loss		\$ 13,934.37
		<hr/> <hr/>

Defendant's Exhibit D—(Continued)

No part of the net capital loss of \$13,934.37 is deductible, since section 117(d), Internal Revenue Code, provides that losses from sales or exchanges of capital assets shall be allowed only to the extent of the gains from such sales or exchanges, plus the income of the taxpayer or \$1,000.00 whichever is smaller.

Computation of Tax

Net loss adjusted		\$ (13,668.54)
Income tax liability		None
Liability disclosed by return:		
Original account No. 9079003	\$ 14,671.60	
Supplemental account		
No. 10-300006-51	2,118.24	16,789.84
	<hr/>	<hr/>
Overassessment in income tax		\$ 16,789.84
		<hr/> <hr/>

Received in evidence October 25, 1955.

DEFENDANT'S EXHIBIT N

In the Superior Court of the State of California
in and for the County of Del Norte
No. 3801

SAMUEL A. AGNEW,

Plaintiff and Cross-Defendant,

vs.

SAMUEL J. WILSON,

Defendant and Cross-Plaintiff,

JANE DOE WILSON, His Wife; JOHN DOE
and RICHARD ROE,

Defendants.

DEPOSITION OF SAMUEL J. WILSON

Be It Remembered that pursuant to stipulation on file in the above-entitled action, the deposition of

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

Samuel J. Wilson, defendant and cross-plaintiff, was taken before Hon. George T. Berry, Jr., Justice of the Peace in and for Del Norte County, State of California, on Friday, July 23, 1948, at the hour of two o'clock p.m. in the court room of the Superior Court of the State of California, in and for the County of Del Norte. There also appeared at said time and place Irwin T. Quinn, attorney for plaintiff and cross-defendant, and William W. Speer and C. E. H. Maloy, attorneys for defendant and cross-complainant.

The witness was by said magistrate thereupon duly and regularly sworn to testify to the truth, the whole truth and nothing but the truth in the matter of his deposition, and the taking thereof proceeded, Irwin T. Quinn conducting the examination on behalf of plaintiff and cross-defendant, and William W. Speer and C. E. H. Maloy on behalf of defendant and cross-plaintiff.

The taking of said deposition was commenced on said 23rd day of July, 1948, at two o'clock p.m. and was completed on July 24, 1948, at 12 o'clock noon.

The said deposition in respect to the testimony given and all matters incident to the taking of the same were by Margaret Duffy thereupon taken down in shorthand and transcribed into typewriting, under the direction and supervision of said magistrate and delivered to the magistrate for sub-

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

mission to the said witness for perusal, correction and signature.

The testimony of said witness is as follows: [2*]

SAMUEL J. WILSON

having been regularly sworn, testified as follows:

Cross-Examination

By Mr. Quinn:

Q. Your name is Samuel J. Wilson?

A. Yes.

Q. Where do you reside, Mr. Wilson?

A. Well, I reside here in Crescent City; part of the time in Grants Pass. This is my home.

Q. This is your home, Crescent City? You are the defendant and cross-plaintiff in this action; and I show you this document, Mr. Wilson.

A. Well, I probably read most of it but not all of it because Mr. Isaacs has been handling it.

Q. I was not asking you about that. This subpoena duces tecum was served on you by Theo H. Hunt on the first day of June, 1948.

A. I believe it was.

Mr. Quinn: We introduce into evidence this subpoena duces tecum as Plaintiff's Exhibit No. 1.

I would like to introduce the stipulation in Action No. 3801, this action, filed in the Superior Court of the County of Del Norte—the stipulation signed by myself, Irwin T. Quinn, attorney for

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

Samuel A. Agnew, and William W. Speer, attorney for Samuel J. Wilson, filed here on July 16, 1948, as Plaintiff's Exhibit No. 2.

Q. (By Mr. Quinn): Did your attorney make a demand for a bill of particulars in action on account? [3]

Mr. Maloy: If you know.

Mr. Quinn: In which he admitted service on the 30th day of June, 1948?

The Witness: What is this?

Mr. Quinn: Demand for a bill of particulars. I will ask to have introduced in the record of this deposition a document entitled "Demand for Bill of Particulars in Action on Account" signed by myself as attorney for Samuel A. Agnew and filed in the proceedings in this case on June 30, 1948, by Emma Cooper, county clerk, by Elizabeth Griffin, deputy, and the admission of service of same in these words "I hereby admit service of the within demand for a bill of particulars this 30th day of June, 1948. William W. Speer, attorney for defendant and cross-complainant." I wish to have that document appear in the record by reference as Plaintiff's Exhibit No. 3.

Mr. Maloy: For the record I will make the objection that it is incompetent, irrelevant and immaterial.

Mr. Quinn: All right.

Q. Have you furnished us with a statement of

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

the amount of money expended by you in maintaining an office? A. No, I have not.

Q. Or in employing secretarial help?

A. I don't think that would concern anybody; I have nobody else paying that bill but me.

Q. Or in maintaining a telephone; you have not furnished us [4] a statement on that?

A. I will tell you, Mr. Quinn—Mr. Isaacs as you know has been in the hospital; he is taking care of it for me. I tried to get him to come up and he is not able to come up.

Q. Or any cruising or costs for cruising any lands or timber?

A. I have not got a statement and I won't have until he is able to be about.

Q. In other words you have not furnished us with a statement of any of the things that were demanded?

A. I am not in a position to furnish them; but I can furnish you most anything else.

Q. You have not furnished us anything up to this time? A. No.

Q. Now, according to your complaint you entered into this agreement with Mr. Agnew on February 15, 1943?

A. Well, I would not say it was February 15th.

Q. Well, have you a copy of the complaint?

A. Which complaint is that?

Q. Well, your last one, your cross-complaint; you allege in Count 3 that on or about the 15th day

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

of February, 1943, counter-plaintiff contracted with plaintiff and counter-defendant in regard to the purchase, according to your cross-complaint of certain timber lands in the State of Oregon and California—when was it you contacted him?

A. I contacted him in May in Centralia; I don't know how that got in there. [5]

Q. In May in Centralia; what date in May?

A. Along in the middle of the month.

Q. Whereabouts in Centralia?

A. At his office.

Q. That was in what year? A. 1943.

Q. Who was present? A. Both he and I.

Q. No one else present? A. No one else.

Q. Was there anything put in writing on that date? A. No, sir.

Q. Then you allege in your cross-complaint, count 11, that on or about the first of March, 1943, defendant and plaintiff entered into an agreement to purchase certain privately owned timber land in the States of California and Oregon. Where did that take place?

A. When I first discussed it with him I told him about timber down south and he and Mr. Sherwood and I made a trip down there to look it over.

Q. When was that?

A. Well, about the middle of May.

Q. You allege in your complaint that on or about March 1, 1943—

A. I didn't read it very carefully.

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

Q. Where did that conversation take place?

A. In Mr. Agnew's office the first time I met him.

Q. That was the first time you met him?

A. Yes.

Q. Was that the time you entered into this agreement?

A. No, not right at that time, that moment.

Q. When did you enter into the agreement? [6]

A. After my trip down south.

Q. Well, what do you mean by down south?

A. Well, I went down and looked at that timber down at Lobster Creek and the Phillips tract; I am speaking of the time I made the trip from Centralia to look at the timber.

Q. Did you at that time offer him the Lobster Creek property subject to an option that was already outstanding? Was there any writing in regard to that?

A. No, I told him that if the other fellows didn't take up the option I would work out a deal with him.

Q. Were any of the agreements or understandings you had with Mr. Agnew reduced to writing?

A. No; verbal.

Q. This was all verbal?

A. Except some letters.

Q. Now, you received certain money from time to time from Mr. Agnew?

A. That's right.

Q. Did you keep a bank account here?

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

A. Well, I did here and down in Eureka and Gold Beach.

Q. You keep bank accounts in Eureka and in the Gold Beach bank? A. Yes.

Q. Which bank in Eureka?

A. Bank of America.

Q. Do you keep any accounts down in San Mateo?

A. Well, I had an account down there but that was an inactive account.

Q. What bank?

A. I have forgotten; I have not banked there for five years; it was my own personal account there. I [7] didn't do any business with that.

Q. What bank did you deposit these moneys you got from Mr. Agnew in?

A. In a great many instances I didn't deposit them at all; they were the exact amount of money.

Q. You never deposited the exact amount?

A. I say they were the exact amount of money—drafts drawn for the timber.

Q. Well, you got the money?

A. Yes, I got the money he paid for the timber.

Q. Have you got an account of the moneys you received from Mr. Agnew?

A. The fact of the matter is that in most instances I drew on Mr. Agnew for exactly the amount of money it took to handle the deal.

Q. That isn't answering my question. Have you got an account, statement?

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

A. I have not got it with me; it has got to be made up. The reason I didn't make it up because at the time, all the time we were doing business Mr. Agnew was handling all the stuff up there, and he got my letters on everything.

Q. I am asking you now—have you got any real book account?

A. I have not got it complete; I was unable to give a book account until I know how much Mr. Agnew advanced me.

Q. This was Mr. Agnew's money you were handling? A. Well, I—— [8]

Q. You received certain checks?

A. That's right.

Q. From Mr. Agnew; what did you do with those checks? A. Paid them out for timber.

Q. How did you pay them out?

A. Well, the checks in most cases were the exact amount.

Q. Have you got a statement with you?

A. No, I have not.

Q. Did you bring your bank statement?

A. No, I have not.

Q. That subpoena duces tecum required you to do that, didn't it?

A. Well, unfortunately Mr. Isaacs has been under the weather. He was supposed to get this stuff together for me but was unable to do so.

Q. This thing has been pending for a long, long time. A. I know.

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

Q. Haven't you got with you your bank books?

A. No.

Q. You were asked to bring them.

A. I didn't see Mr. Agnew's bank book this morning.

Q. Have you brought your cancelled checks?

A. I have some of them.

Q. Can we see them?

Mr. Maloy: Which particular check do you want. If you specify the check and Mr. Wilson has it we will produce it. You can't go on a fishing expedition after all of the checks.

Mr. Quinn: Checks pertaining to these transactions in timber.

Mr. Maloy: Which transactions? [9]

Mr. Quinn: All right, Mr. Wilson. You purchased some land from a man by the name of Stubrud in Portland.

A. That was a draft drawn on Mr. Agnew for that amount of money; eleven thousand and some odd dollars.

Q. Did you pay Mr. Stubrud for that?

A. I paid Mr. Leib who was handling the deal.

Q. Who is Mr. Leib?

A. A man in Portland.

Q. What does he do?

A. He is in the real estate business; he handled the deal for me.

Q. You sent him \$11,000?

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

A. It involved \$11,500, as I recall; I don't remember exactly; 11,000 or 11,500.

Q. Have you got the check there?

A. No, I drew a draft on him and he paid the draft; I paid the taxes and drew a draft on him for the difference.

Q. Through what bank?

A. I don't recall through what bank; anyway the transaction was completed.

Q. A bank in Portland?

A. It might have been.

Q. Your own draft?

A. I drew the draft on him for whatever amount of money it was; I think around 11,000 dollars.

Q. Have you got the draft there?

A. No, I have not got the draft; I think it was drawn in Gold Beach as I recall. But it might have been in Portland. But [10] the amount—you have got the amount and the letters and everything.

Mr. Quinn: No, we have not. We are getting these amounts from you.

Q. What are Mr. Leib's initials?

A. Howard Leib.

Q. What firm is he connected with?

A. He is in business for himself.

Q. Have you his address?

A. I couldn't give it to you offhand now.

Q. Will you get it for us?

A. I can. I got all the letters and correspond-

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

ence pertaining to that deal if you want to see them.

Q. Where are the letters?

A. They are here.

(Hands file to Mr. Quinn.)

Q. (By Mr. Quinn): How did you pay Mr. Stubrud for his timber. A. I paid him cash.

Q. You paid him cash? A. Yes.

Q. You gave it to him in cash?

A. Yes. Well, I don't know whether cash or bank draft.

Q. Well, if you gave a bank draft you would have that back wouldn't you?

A. Well, I bought a bank draft; I either gave a check or bank draft.

Q. All right, where is your cancelled check for that transaction? A. I haven't got any.

Q. Have you got a draft? [11]

A. I am not asking anything on that; why Mr. Agnew got deed for \$11,500, didn't he? I am making no claim on it.

Q. That's all right; did you pay this man up in Portland?

A. I think I paid him in Portland.

Q. You were there personally?

A. I was there or Leib was—he paid him or I paid him. Five years ago.

Q. You can't produce either a check or a draft, Mr. Wilson, in payment?

A. Yes, I have a draft right there; \$9000 and

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

something for taxes. I think that is in there; I am not positive.

Q. Is this the draft you mean?

A. I am not positive; I have to read the letter over to see if it fit in all right; there are some taxes on there.

Q. Here is one.

A. No, that isn't a draft; here is another one; I think this one is on the Reid deal, this one here; at any rate he got the deed for that amount of money.

Mr. Quinn: We admit we got the deed. I hand you an advice document.

A. Well, now, I made these deals as they went along—I didn't have any time; as I bought the timber he paid me for it and that was the end of it.

Q. You paid, according to this, \$9036.24?

A. I don't say I paid it.

Q. This is a draft—Sam J. Wilson. [12]

A. Well, it is a long time ago; I don't recall exactly what that detail is.

Mr. Quinn: I ask to have this introduced in evidence.

The Witness: I wouldn't introduce it in evidence; I don't know what it is myself; it fits some place.

Mr. Quinn (Reading): National Bank of Commerce, Centralia, Washington. Marked paid 10-21-1943, First National Bank of Portland, Main Branch, Portland, Oregon, drawer S. A. Agnew Lumber Company, Centralia, Washington, through

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

your bank under the heading Documents—drafts, M. J. Wilson, D.T.D. 191743, with warranty deed attached—amount 9036.24.

The Witness: I don't think that fits in there, between you and I, I think it is another deal.

Mr. Quinn: "Mailed to Samuel J. Wilson, Portland Hotel, Portland, Oregon. Dated 9/2/19——

The Witness: Mr. Quinn, you see the letter there, there's a difference in taxes—1900 and some odd dollars—that doesn't fit in there.

Mr. Quinn: There's another draft numbered C102714, Centralia Branch, National Bank of Commerce, Centralia, Washington, marked paid September 30, 1943—First National Bank of Portland, Portland, Oregon, drawee S. A. Agnew, Agnew Lumber Company; through your bank documents—drafts, Sam J. Wilson—1146.36—Samuel J. Wilson, Portland Hotel. Were those two drafts concerning the same deal? [13]

A. I don't think they did. I just put **them** in there. I can't figure where they fit in; there were a lot of other ones at that same time.

Q. This money that is indicated in this draft, dated September 17, 1943—\$9036.24—did you get that money? A. Sure I got it.

Q. You got the money? A. Yes.

Q. Did you deposit it in your bank account?

A. I don't know what I did with it or where I deposited it.

Q. You have no check?

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

A. I presume that is a completed transaction; he got the timber and I got the money.

Q. But you have no check or draft that you gave to Mr. Stubrud for the purchase of that timber from him? A. No.

Q. Did you deal with anybody beside Mr. Leib in that? A. No.

Q. Did you ever deal with Mr. Stubrud?

A. I bought through Mr. Leib and he bought it from Mr. Stubrud. That is, he made the deal.

Q. You never had any direct contact with Mr. Stubrud? A. Well, I don't know that I did.

Q. Up in Curry County there was another transaction relating to the Reid land?

A. I also had that, too.

Q. With whom did you deal in that transaction?

A. Mr. Reid.

Q. Where did he live at the time?

A. He lived in Portland, Oregon? [14]

Q. How much did you pay him?

A. Same way, by draft.

Q. I am not asking that now; I am asking you how much did you pay Reid?

A. I don't remember; it was a completed transaction.

Q. You don't remember a completed transaction?

A. Mr. Agnew got the draft and paid it; got the deed. The deed went along with it; I don't know where that enters into this picture.

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

Mr. Quinn: Well, we are going to find out. You got a draft from Mr. Agnew for \$8549.14?

A. I will show you——

Mr. Maloy: I suggest you let Mr. Quinn ask you what he wants.

Q. Have you got that draft, Mr. Wilson?

A. Well, I drew on Mr. Agnew for that amount of money, as I recall—what's the amount of that draft?

Mr. Maloy: \$9033.24——

Mr. Quinn: December 16, 1943—where were you when you got this money?

A. I was living in my suitcase; I might have been most any place.

Q. This draft is payable to you?

A. \$8549.14. Well, it says Reid property.

Mr. Quinn: That simply has been written on there by somebody. A. Well, that's what it is.

Q. What did you do with that money when you got it? [15] A. I paid it to Mr. Reid.

Q. Did you deposit it in your bank account?

A. I think I gave him exactly what that called for.

Q. Have you a check?

A. No, it was a draft.

Q. Have you got the draft?

A. No, I have not got the draft.

Q. Got no draft? A. No.

Q. What bank did you draw on?

A. Well, I might have drawn it on any bank; I always figured these were completed transactions.

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

Q. Probably some of us have different ideas. You have no check you paid to Mr. Reid?

A. I have a letter.

Q. Then you didn't draw a check on your own account for it? A. Want me to get the letter?

Mr. Maloy: Wait until he asks for something.

Mr. Quinn: We are asking you about the money; you are handling it.

A. Well, I paid Mr. Reed for the property and Mr. Agnew got the deed.

Q. How did you pay Mr. Reed?

A. I don't recall; 5 years ago.

Q. You don't know whether you wrote him a check? A. No, or whether I gave him a draft.

Q. Did you give him this draft?

A. I think that's the one; there was some taxes on top of that. That is less the taxes.

Mr. Maloy: How much is that?

A. \$8549.14. [16]

Q. (By Mr. Quinn): You never endorsed this draft over to anybody?

A. Well, how do you know I didn't.

Q. Your signature is not on there, is it?

A. Any time you get a draft with my signature on I didn't draw it; it must be Mr. Agnew; I don't recognize that.

Q. You can't tell us how you paid Mr. Reed?

A. I have correspondence showing Mr. Reid was paid. Want to see it?

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

Q. (By Mr. Quinn): Yes. Now, I will ask you again how you paid Mr. Reed for this timber?

A. I don't know how I paid him; I paid him.

Q. You don't know how? A. No.

Q. Now, did you tell him in that transaction to take \$6358.85 from the draft and to send you the balance?

A. That's right; to be sent to me, Box 847, Redwood City, California. That's right.

Q. What was that balance? Was that the difference between \$8549.14 and \$6358.85?

A. I don't know; it is 5 years ago.

Q. What did you do with the balance?

A. How would I know what I done with the balance—think I got a mind that I could remember 5 years?

Q. The difference between those is \$2190.29?

A. I think that was taxes.

Q. You paid that for taxes; how did you pay the taxes—who did you send the check to? [17]

A. I paid them in Gold Beach.

Q. How did you pay them?

A. Mr. Agnew had the tax receipt and everything.

Q. I am not asking that. You said you paid it. Did you give the tax collector a check or cash?

A. I don't know; it was mostly all drawn in drafts. I paid some by check and some I did not; but they are paid; that's the main thing. He got the deed.

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

Q. Have you got the check?

A. No, but he got the deed, didn't he?

Q. I am asking you if you paid these taxes and if you have a check whereby you paid the taxes on this Reid property in Curry County?

A. Well, I would not say I did, but they are paid.

Q. That is all you know; that they are paid. Did you deposit that balance of \$2190.29?

A. I don't know what I did. All my business transactions were made as we went along from deal to deal.

Q. I would like to make a reference to this letter? (Reading): "Portland, Oregon, 14th December, 1943, Branch Canadian Bank of Commerce, Portland, Oregon. Dear Sir: Referring to the draft for \$8549.14 which I have today left with you drawn on S. A. Agnew, care of the Agnew Lumber Company, Centralia, Washington—when this draft has been paid, please pay David Reid from the proceeds \$6358.85—6358 85/100, balance to be sent me at Box 847, Redwood [18] City, California, after deducting my charges. Deed in favor of S. A. Agnew, covering property in Curry County, Oregon, to be attached to draft. Yours truly, Release to S. A. Agnew only upon payment of sight draft."

Q. You wrote such a letter? A. Yes.

Q. Did you handle the deal known as the Frick deal? A. That's right.

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

Q. Property in Curry County?

A. That's right.

Q. There were a number of people involved in that deal? A. I don't remember; a number.

Q. Do you remember getting a deed from the Fricks on or about July 28, 1944?

A. Well, I don't—

Q. One deed on that date—

A. I had several deeds from them before I got one that was good.

Q. With whom did you transact that deal?

A. Oh, there were three or four Fricks, a man by the name of Smith and a woman, I can't think of her name offhand.

Q. They live around San Francisco?

A. That's right.

Q. Who did you have the particular transaction with—who did you conclude the deal with?

A. I don't just recall.

Q. You don't know which one it was? What did you pay them for that property?

A. With draft.

Q. I am asking how much?

A. I paid them for that property?

Q. Yes.

A. I paid them about—I have forgotten exactly what [19] it was; I can dig up a record on it.

Q. You have forgotten the amount. There were quite a number of acres involved?

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

A. Yes, I know; quite a lot of people's timber, too.

Q. What is your best recollection of what you paid?
A. I haven't any idea.

Q. Have you got any record on it?

A. I probably have some place.

Q. Some place—what do you mean by that?

A. I have got a record.

Q. How did you pay them?

A. I paid them on—I don't know how I paid them.

Q. You don't know whether you paid them by check or draft?

A. I got the timber and got title insurance and that's all I was interested in.

Q. Did you have to put up money anywhere?

A. I put up some money on a down payment; I have forgotten the amount.

Q. You don't know how you paid it now?

A. No.

Q. Does it refresh your memory that there were revenue stamps of \$19 on the deed?

A. I don't recall that.

Q. Have you got an entry in any of your books anywhere of the amount you paid for that timber?

A. Well, I probably have.

Q. You didn't bring with you any accounts, any book accounts or entries?

A. No, I didn't think it was necessary. [20]

Q. Well, have you got them?

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

A. I think maybe we have.

Q. Where are they?

A. I don't know; I would have to look them up; some place in my possession.

Q. If you paid it by check; that check would show; you haven't got a cancelled check, have you?

A. Probably, if I paid it by check.

Q. You probably have it, but you didn't bring it with you?

A. I told you some of the checks as far back as that I haven't got.

Q. What did you do with them?

A. I don't know.

Q. Destroy them?

A. No, not necessarily; a man don't keep them after—that transaction was a completed transaction.

Q. Did you bring your bank book from the Bank of America here in Crescent City?

A. No; neither did Mr. Agnew bring his.

Q. As far as I know he was not requested to bring his bank book. You have your bank book?

A. I think so; I haven't got them that far back.

Q. You have your bank statements?

A. Not that far back.

Q. Have you got any documents or letters from Frick about the amount?

A. Might have some place.

Q. Have you got them with you? A. No.

Q. Any correspondence between you and them

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

about the deal?

A. Well, I didn't have very much correspondence. I went down there personally and called on them. [21]

Q. You were asked to bring in letters and correspondence that was held between yourself and the owners of these lands that you acquired. Have you got any?

A. I have not got them with me. I don't know whether I can find them or not; that's a long time ago.

Q. Why didn't you bring them in?

A. I couldn't find them.

Q. Did you make a search for them?

A. I did.

Q. And you couldn't find them. Now, you bought some timber from some people by the name of William Flood?

A. That's right.

Q. Where do these people live?

A. Gold Beach; I bought some timber on a five or seven-year lease.

Q. How much did you pay for that?

A. As I recall it was around one thousand, but I forget.

Q. How did you pay that?

A. Paid it through Mr. Newhouse.

Q. Who is he?

A. Mr. Newhouse lives at Gold Beach.

Q. You paid these people \$1000?

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

A. Or thereabouts; I have forgotten just what it was.

Q. How did you pay it?

A. I don't remember.

Q. Pay by check or draft?

A. I don't know.

Q. Have you got any returned check that you paid to the Floods? A. I doubt it.

Q. Do you think you paid it by draft?

A. I don't know. [22]

Q. Have you got an entry in your books of that deal?

A. Just a rough entry of what I had to pay for income tax.

Q. Where is it?

A. I couldn't tell you where it is right now; I am just going by memory; if you want to check with Mr. Newhouse——

Q. You want us to check it?

A. I presume you want to check it up.

Q. What we wanted you to do was to bring these things into Court——

A. Well, I haven't got them.

Q. You have no record then of the Flood deal?

A. I know it is about a thousand dollars.

Q. Have you a book entry?

A. No, I can't find it; I had some, but I can't find it. I never kept a real set of books——

Q. You never kept a record of these checks?

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

A. From the time I moved down here and started at Eureka I kept a record—I kept books.

Q. When did you come to Eureka?

A. I came down there in 1944.

Q. Where is the record you kept?

A. In Eureka. Isaacs has that.

Q. You knew that this deposition was going to be taken for some long time?

A. I know; let's get this clear. I didn't have the amount of money; I relied on—when I took these documents up [23] there these deeds and everything was wrong. I did not have anything else to check from up until that time. I think I made that clear. I have been trying for a long time to get the exact amount of money Mr. Agnew gave me.

Q. You got the money and checks from Mr. Agnew? A. Yes.

Q. Checks that you cashed?

A. That's right.

Q. And that you put into your bank account or done something with it?

A. Most of those checks were for the exact amount of the timber; made out to me, paid over to the county; if I bought a piece of timber for \$800 Mr. Agnew sent me the check and I took it up and gave it to the county clerk and sent him a deed for it; all these small checks, that's what it amounted to.

Q. Here is a check for \$5000, September 30, '44, made out to you; what did you do with that check?

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

A. I just don't recall what that check was for; I never had the check down there unless it was something pertaining to Klamath cedar.

Q. I am asking what did you do with the check?

A. I couldn't say offhand; it says "Miller tract"; I deposited it on the Miller tract.

Q. You endorsed it? A. That's right.

Q. On the Miller tract. Here's a check of March 29, '46—\$5000 made out to yourself and endorsed by yourself; what did you do with that money? [24]

A. Paid some taxes with it.

Q. Did you deposit the money in your bank account? A. Yes, I did; must have; here it is.

Q. Have you got the check that you paid?

A. I got quite a lot of checks.

Q. Will you produce what checks you have got?

A. I will produce some of them; what date was that?

Q. This last one was March 29, '46.

A. I don't seem to have that; here is one of '45; when was that dated?

Q. This last was March 29, 1946? A \$5000 check.

The Witness: I have no record of it here, but I do know on several occasions Mr. Agnew made a check out to me and I deposited to the account of Klamath Cedar Company; I think maybe that's one of them.

Q. You think now you deposited this check?

A. I don't know; I can't say.

Q. Why would Mr. Agnew give you a check to

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

go and deposit in Klamath Cedar Company account?

A. I don't know; he gave me some to deposit in Klamath Cedar.

Q. He could write a check himself——

A. He sent them to me and told me to go do it for him.

Q. Have you any letters to that effect?

A. No, but I think I can show you some of these checks were deposited in the Klamath Cedar Company account.

Q. He gave you his own check to go deposit in his own account?

A. That's right; maybe he didn't give it to me here; maybe [25] he gave it to me somewhere else.

Q. Do you know where you were on March 29, '46?

A. No.

Q. Now, do you remember a transaction with Thomas A. Barnum and a deed to lands in Curry County?

A. Yes.

Q. I think it was a one-third interest; where was Mr. Barnum then?

A. I don't recall Mr. Barnum.

Q. What is it?

A. It was a timber tract but whether Mr. Barnum had anything to do with it or not, I don't know.

Q. What did you pay him?

A. That deal went through Brown and Brown. In Portland.

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

Q. What did Brown and Brown do?

A. They had the timber; I bought it from them.

Q. Where are they located?

A. Well, they are timber cruisers. They are well known.

Q. Have you a real estate operator's license in California? A. No.

Q. How much did you pay Mr. Barnum?

A. Oh, around \$10,000.

Q. For his one-third interest?

A. No, for all of it.

Q. How did you pay it?

A. Is that up in Curry County?

Q. Yes.

A. Well, he got the whole thing and got title insurance on it.

Q. You mean the Reynolds deal went along with that? A. That's the whole thing.

Q. Who did you pay the money to?

A. Brown and Brown.

Q. How did you pay it?

A. I think Mr. Agnew paid it direct; sent me a check and paid it direct. [26]

Q. You think Mr. Agnew sent the check direct?

A. I think he did pay it direct through Jim Bettingfield—he was Mr. Agnew's attorney; he handled the deal.

Q. Jim Bettingfield?

A. Yes, of Coos Bay.

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

Q. You don't think you issued any check or draft for that? A. I don't recall.

Q. Did you enter that in your books?

A. I probably did in my own book; I didn't have an office then.

Q. Where is your own book?

A. I don't know; I wish I knew; I could tell you something about it.

Q. You lost that, too?

A. No, I don't think it is lost; it will show up maybe.

Q. You say the money was paid to Brown and Brown?

A. Well, either to Brown and Brown or Bettingfield was in the middle some place and title insurance was paid and the transaction was closed as far as I was concerned.

Q. You have no record or any entry concerning that deal?

A. Well, I think you can find out from Brown and Brown what it was.

Q. You are the man that sued us here?

A. I am not making any claim on that.

Q. You are familiar with the Elmer Bankus deal? A. Very much.

Q. Up in Curry County? A. That's right.

Q. How much did you pay Mr. Bankus? [27]

A. One hundred thousand.

Q. How did you pay him? A. Draft.

Q. Your own draft?

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

A. No, draft on Mr. Agnew; I paid him five thousand in cash.

Q. Get a receipt for it? A. Yes.

Q. When did you pay him \$5000 in cash?

A. About the first of December.

Q. Did you get that amount back from Mr. Agnew? A. I don't think I did.

Q. Here's a sight draft, Bank of America, Crescent City—\$96,340? A. That's right.

Q. You got that draft? A. Yes.

Q. What did you do with it—the money?

A. It was drawn directly on the bank here; the bank got the money, I didn't.

Q. Was that put into your account?

A. No; paid direct by Mr. Agnew; Mr. Agnew paid the drawer when it was presented to him.

Q. How did you pay Bankus?

A. Got it out of that money; the bank paid him.

Q. He issued a check or something to Mr. Bankus?

A. Didn't have to; that draft went through and when the draft was paid he got his money.

Q. This draft was not made payable to Mr. Bankus?

A. Well, check with the bank down there; they paid it; it was in escrow down there. [28]

Mr. Maloy: What's the date of the check?

Mr. Quinn: January 4, '46.

Q. Have you any record or account of that Bankus transaction?

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

A. Yes, I got all the contracts and everything; I made the deal.

Q. Have you any entries of cash received or cash paid out?

A. I have cash paid out—\$5000.

Q. Have you got your check on that?

A. I think I have.

Q. Mr. Wilson, did you pay any of the taxes on the Bankus property?

A. No, that was taken out of the \$100,000.

Q. How much—do you know how much was taken out?

A. No, quite a bit; about \$30,000 or more.

Q. There was current taxes—you are speaking now about delinquent taxes against the property?

A. I don't recall; I think they were paid up to date at the time.

Q. Going back to the Frick deal—did you pay any taxes on that?

A. I can't recall whether any taxes paid on that. My client since may have paid them; I don't know.

Q. Did you pay any taxes on the Barnes and Reynolds deal? A. Yes; I paid the taxes.

Q. How much?

A. Oh, couple of thousand.

Q. How did you pay them?

A. I don't just recall.

Q. Did you pay by check?

A. I couldn't say. [29]

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

Q. You paid it personally in the tax collector's office in Curry County?

A. I don't know; yes, I am sure I paid it; I am inclined to think Mr. Agnew sent me two checks and one was for taxes.

Q. That Mr. Agnew gave you the check?

A. I am inclined to think that; I am not sure.

Q. Have you got the tax receipt?

A. No, I gave everything to Mr. Agnew when I delivered the deed to him.

Q. You delivered it to Mr. Agnew. Now, you acquired some property in Curry County from an Arthur Reid Smith, Trustee under the will of Kate M. Smith in your own name.

A. Oh, I bought that and I sold it. Where was it?

Q. In Curry County, Township 36.

A. How much land was it?

Q. Oh, I don't know; a number of 40's here; looks like 200 acres, if I am right.

A. I don't recall that name.

Q. Have you still got that timber?

A. No, I sold 480 acres to Mr. Agnew.

Q. Was this Smith deal part of it?

A. No, I bought it from the bank, National Bank of Commerce; I would have to look into that Kate M. Smith.

Q. That deal—the deed was dated April 17, '45. You got another deed about that time from a Lillian Prinkham.

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

A. Oh, that was a different transaction altogether.

Q. That was a different transaction but you got these deeds for that property?

A. Yes, that's right.

Q. When did you acquire the Smith property?

A. I don't know; it was not the Smith property. It belonged [30] to a man by the name of Clutter.

Q. Was that in the Clutter deal? A. Yes.

Q. There were a number of deeds gotten in that—from Jesse L. and Charles E. Clutter?

A. Yes.

Q. Have you still got that property?

A. Yes, I bought it and paid for it.

Q. How much did you pay for it?

A. \$2000.00.

Q. You got that at the same time that you got the Reid property?

A. No; I did not; I was 2½ years buying that; in fact, I am still buying it.

Q. The Clutter property still stands in your name? A. That's right.

Q. And you claim that as your own?

A. Absolutely.

Q. How did you pay Mr. Clutter?

A. Paid him with draft.

Q. Have you got a copy of the draft or have you the returned draft?

A. I will look; I got it some place.

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

Q. Did you buy some property from a Margaret Ward Riddell?

A. Yes, I bought that a couple of months ago.

Q. The deed was made out to you?

A. Sure.

Q. You still have that property?

A. Still have.

Q. How much did you pay her for that?

A. \$4000, I think.

Q. How did you pay it? A. Cash.

Q. Paid her in cash? A. Yes.

Q. No check or draft? [31]

A. I don't know whether I paid her by check or draft; I know I paid her.

Q. Going back to the Bankus deal, was there a cruise on that? A. Yes, some cruise on it.

Q. Pay anybody for a cruise?

A. Yes, paid about \$1,000.

Q. To whom did you pay that?

A. A man by the name of Harvey.

Q. What's his first name? A. B. J.

Q. Where does he live?

A. Lives in Portland. B. J.

Q. Did he give you a receipt for that?

A. Yes.

Q. May I see it, please? (Receipt produced.)

Q. What's Mr. Harvey's address?

A. I don't know; he is a timber cruiser.

Q. You don't know; he is a timber cruiser. Have you got the cruise?

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

A. Why, I think I mailed the cruise to Mr. Agnew. It was a piece of timber sold to a man by the name of Kane; we were selling to him.

Q. You haven't got the cruise he furnished you?

A. No, I told you I mailed it to Mr. Agnew.

Q. To Mr. Agnew?

A. Yes, at the time we were making the deal.

Q. You say this was a cruise on the Bankus timber?

A. That's right.

Q. The deed of the Bankus timber was recorded, was made January 23, 1945—and this statement was dated March 19, '46.

A. That's right.

Q. And it reads—Mr. Sam Wilson, time, expenses, Crescent [32] City trip from February 26 to March 19, inclusive, B.J.H. 17 days at \$25—\$425. Meals, cabins, hotels, \$187.95—less \$100 check—total amount March 19, '46, \$512.95. (Signed) B. J. Harvey. Endorsed, paid in full March 21, '46. B.J.H.

And another one, March 19, '46, Mr. Sam Wilson. Time and mileage on Crescent City trip February 26 to March 19, inclusive, L. S. Holmes, 19 days, \$12.50, \$237.50—729 miles, 23c a mile to March 19, '46, \$281.24. Who is L. S. Holmes?

A. He is a compass man.

Mr. Quinn: You made out a check to B. J. Harvey—\$794.19, on March 24, '46, signed Wilson Timber Company—Sam J. Wilson. Another check dated March 6, '46, pay to the order of B. J. Harvey, one

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

hundred—signed Wilson Timber Company—Sam J. Wilson. Marked paid.

Q. You kept an account in the Wilson Timber Company, didn't you?

A. Well, this was a matter where we were making a deal with a man by the name of Kane. We cruised a piece of timber up there and it was at Mr. Agnew's request, the cruise was.

Q. I thought you said that was in reference to the Bankus deal?

A. It is a part of the Bankus timber.

Q. You have an account here in the Wilson Timber Company?

A. Well, I just paid the bill.

Q. I am asking you if you have a bank account in the name of the Wilson Timber Company?

A. Yes. [33]

Q. You also have a bank account in your own name? A. No, I don't.

Q. Is that the only account you carried here in the Bank of America, Crescent City Branch?

A. Yes.

Q. In what name did you carry your bank account in Gold Beach? A. In my own name.

Q. The one in the Bank of Eureka?

A. Wilson Timber Company.

Q. Which bank is that in?

A. Bank of America.

Q. In what name did you carry the bank account in San Mateo? A. My own name.

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

Q. Which bank was that?

A. I have forgotten the name. It was not San Mateo; it was down in Palo Alto.

Q. In this deal with Margaret Ward Riddel, who did you deal with?

A. With her attorney.

Q. Who was he?

A. I have forgotten the name.

Q. Did you send a check to her?

A. No, draft.

Q. You have the draft?

A. No, I haven't the draft.

Q. What became of the draft?

A. I don't know as that concerns you.

Q. I wouldn't ask you a question unless I felt it did. Where is the draft you paid?

A. I don't know where the check is.

Mr. Maloy: The bank has probably got it; don't they keep them?

Mr. Quinn: We are supposed to have them here. You are supposed to have anything here that pertains to this business. [36]

Q. There was a deal known as the Miller timber in Del Norte County? A. Yes, sir.

Q. Who did you deal with in that?

A. Mr. Miller.

Q. How much did you pay him for that timber?

A. \$20,000.

Q. How did you pay him? A draft?

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

A. Mr. Agnew sent me a check for that made out to Miller.

Q. In addition to that check was there other money paid? A. Yes, taxes.

Q. How much did you pay on taxes?

A. I have forgotten offhand.

Q. Did you pay them? A. I did.

Q. Have you got the tax receipts?

A. I don't know whether I have the tax receipts in full or not.

Q. You haven't any record on the Miller deal?

A. Only what I could get at the court house.

Q. Did you enter the amount in your books that you paid for taxes on the Miller property?

A. Mr. Isaacs has a record on that.

Q. Have you a record anywhere, an accounting of the amount of money you paid out on taxes on any of the properties that Mr. Agnew later acquired? A. I have quite a lot of them.

Q. Have you a statement?

A. I have not got a complete statement because he has not been able to make it up. [37]

Q. Where is Mr. Isaacs?

A. He just got back from the hospital day before yesterday. He is in Eureka now.

Q. How long has he been your accountant?

A. For 2 or 3 years; 2 years.

Q. Then if you paid any taxes on the Miller timberland you haven't got any receipt or any check?

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

A. Well, I can very easy take it off down there because it shows I paid the taxes.

Q. You knew this was coming up; why didn't you prepare that account?

A. Well, Mr. Quinn, you know in the first place I didn't know exactly how much money was spent and I tried to find out from Mr. Agnew for a year and a half and he tried to find out from me; then he told me he couldn't do anything until he got that.

Q. Nevertheless you had his money?

A. I had some of it, yes.

Q. Do you know how much money you got from him?

A. Oh, I would say roughly—I couldn't give you the exact figure.

Q. Have you got an account somewhere that you kept, a ledger account, of the various amounts of money you received from him?

A. I think in most cases you will find each record speaks for itself for each transaction. [38]

Q. How much altogether in checks did you get?

A. I don't know; you can look them over; I didn't add them up.

Q. You haven't any account of it there?

A. I have no accurate account. I have a few drafts in my pocket.

Q. I am confining you to checks and not drafts. Have you a record anywhere of the amount of checks?

A. That he paid me?

Q. That he paid you.

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

A. No, I think Mr. Isaacs has.

Q. Those checks were deposited in your account?

A. Well, I would say they were or else paid out; sometimes I got a check for the exact amount and I paid it over. I wrote and told him I had a piece of timber say for \$801; these are all for county timber I bought in Curry County at \$5 an acre——

Q. You would turn it over?

A. I either gave them the check or turned it over to them or deposited it myself, but I paid it.

Q. You gave them your check?

A. I either paid it myself or took the check myself and turned it over to them.

Q. You referred to a deal for \$801.

A. That would be on 160 acres Curry County timber as near as I could figure. [39]

Q. Who did you buy that acreage from?

A. The county.

Q. You paid that yourself—bid it in?

A. After the sale was made up there I picked up quite a bit of timber for us for the same price. All turned over to Mr. Agnew.

Q. How did you pay the county on this \$801 deal? A. I may have given them a check.

Q. Is this the check you got from Mr. Agnew on that? A. What date is it?

Q. February 11, '44—\$801.

A. That would be about it, yes.

Q. That would about it?

A. That was the price up there—\$800 a quarter.

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

Q. This check shows it is endorsed by you?

A. That's right.

Q. Nobody else put it through the bank?

A. That's right.

Q. Could the county put it through?

A. (Looking at check): Then I evidently paid the county for the land and got this check for myself after I paid them.

Q. How did you pay the county?

A. I don't know how I paid them; I paid them or I wouldn't get the land.

Q. Have you any check showing you paid the county for that timber?

A. Well, the record is up there; the county knows what they sold it for.

Q. We know that. Have you got a record somewhere where you [40] paid that?

A. I presume so.

Q. But you haven't got it with you?

A. Well, I haven't got it with me.

Q. You bought a piece of timberland here in Del Norte County from Henrietta Woodruff?

A. That's right.

Q. How much did you pay her for that?

A. I couldn't tell you; it was a section of land I paid \$5,200 for.

Q. You paid her \$5,200?

A. For the section of land; not hers; there were three other quarters all at the same time; that in-

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

cluded one of the Hights—which one of the Hights——

Q. Was the Beckstead property involved in that?

A. Seems to me it was—what's that part of it Mr. Puter——

Mr. Quinn: We are asking you. There's a deed here from Henrietta Woodruff to Mr. Agnew August 30, 1945—how much did you pay her for that?

A. Well, I can't tell you offhand because I bought the four on the same date and I forget the exact amount; it was all entered in one transaction—\$5,200.

Q. How did you pay it?

A. I think I paid it by check.

Q. Have you got that check?

A. Haven't got it with me.

Q. How much did you pay to Mrs. Woodruff?

A. I don't know what part Mrs. Woodruff got of it; the whole thing was \$5,200. [41]

Q. There's another deed from Frank J. Haight? And May Haight, his wife, dated August 30th?

A. That's part of it.

Q. How much did you pay to Mr. Haight?

A. I couldn't tell you; I paid \$5,200 for the whole business they are all in the one family.

Q. Maybe; but separate deeds?

A. That's true.

Q. What did you pay Mr. Haight?

A. I don't recall.

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

Q. Have you got any record of it?

A. No, but he got paid.

Q. Only that you paid him. A deed from Letsy Beckstead—Cassidy—Packard—Haight; How much did you pay all these folks?

A. I entered it all as one transaction.

Q. Who did you give the check to or the money to? A. Well, Mr. Puter engineered the deal.

Q. You were paying out the money?

A. That's right.

Q. How did you pay it? A. I don't recall.

Q. Have you got a record of it?

A. Yes, I have a record of it.

Q. Would you produce it?

A. I haven't got it with me.

Q. Did you pay any taxes on those tracts of timber? A. I believe I did.

Q. Do you know how much they were?

A. Couldn't tell you off hand. I just have this jumbled up mess here.

Q. Did you pay that to this tax collector here in Del Norte? [42] A. That's right.

Q. Do you know how much it was?

A. No, I couldn't say.

Q. How did you pay it; by check?

A. I don't remember; presume I paid it by check.

Q. Have your account books anywhere an entry on that? A. Of the \$5,200?

Q. Yes. A. Yes, I have a record of it.

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

Q. Have you got that with you?

A. No, I have not; I have very little with me except the actual transactions as I have them in the file there. I had no way of making up a statement.

Q. Do you keep any ledger account?

A. Mr. Isaacs kept one for me.

Q. Did he keep these accounts up every day?

A. No, he only came down once a month.

Q. He came up about once a month?

A. Or two months.

Q. He put down what you told him?

A. He followed through the records, I presume.

Q. Did you turn over data to him when he came so he could make his account up when he came?

A. I think I gave him everything he needed.

Q. If you turned over some records to him from which to make up your account, when these individual deals went through you must have kept a record of that.

A. I know that that record was all in one piece—\$5,200.

Q. What records did you turn over to Mr. Isaacs? [43]

A. Everything I had.

Q. Well, now—everything I had——

A. I know; my memory is pretty good.

Q. Did you turn over checks?

A. He took everything from my account.

Q. Did you turn over the drafts? A. Yes.

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

Q. Did you turn over any book accounts to him that you kept yourself? A. Yes.

Q. Mr. Isaacs has these book accounts you kept yourself?

A. Well, he has them, or they are over in my office what he has not got.

Q. Either there or in your office; where is your office now?

A. Grants Pass. I was unable to present it myself because I don't know enough about it; he was going to finish it up but didn't get around to do it.

Q. If you have some of these records over in your office in Grants Pass he has not got them then?

A. Well, I don't know what he has got; I left that entirely up to him.

Q. What kind of book do you keep your records in? A. Regular ledger.

Q. Where is that?

A. Well, he has either got it or it is in Grants Pass; he was over there and took sick and didn't finish it up.

Q. When was he over there?

A. He was over there about a month ago. [44]

Q. Is this ledger you speak about that you kept your records in—do you keep other data in it—records besides each deal with Mr. Agnew?

A. Oh, yes; what in particular do you ask about there now?

Q. Do you keep your records in more than one book?

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

A. No; I don't know; he has kept my books for me, but I don't know exactly; I am not a book-keeper; I don't think Mr. Agnew is either.

(At this time Mr. Maloy presents receipt asked for in Miller matter; \$20,000. Found in Mr. Wilson's file.)

Q. There was a deal with Frank W. and Lucy E. Reynolds—deed dated October 8, '47, to Samuel A. Agnew. Did you handle that deal?

A. In '45?

Q. In '47. October 8, '47. Frank W. and Lucy Reynolds.

A. Yes, I think I know the transaction.

Q. Did you handle that deal? A. Yes.

Q. How much did you pay Mr. Reynolds?

A. Well, I couldn't tell you offhand; I think \$1250.

Q. How did you pay him?

A. Well, I don't know how I paid him; by check, I think. Have you got another Reynolds one there?

Q. Yes; one of September 4, 1945.

A. Well, I paid the taxes on that for '45-'46—\$246.95.

Q. You mean on this deal—this September 4, '45? A. Yes.

Q. How did you pay these taxes?

A. Paid them by check. [45]

Q. Have you got the check?

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

A. I haven't the check; I have a statement.

Q. Have you got a record of it? A. Yes.

Q. An account?

A. I imagine so. Maybe I have a check. I will look. Yes, I have one here; this is made out to F. W. Reynolds for \$246.95.

Q. Is that for the purchase price of timber?

A. That's for taxes.

Q. What did you pay Mr. Reynolds for the timber?

A. I think I paid him \$1500, plus the taxes.

Q. Have you the check you paid him?

A. No, not with me.

Q. How did you pay him?

A. I don't know how I paid him; he got his money. I have to look that up later.

Q. Do you know anything about a deal here—a tax deed—Leo Dressler, tax collector of Del Norte County, deed dated October 7, '47, to S. A. Agnew—have you any recollection of that deal?

A. No, I had nothing to do with that, I don't think. What date is that?

Q. October 7, 1947. Here's a deed—E. W. Borcharding—April 1, '46? A. Yes.

Q. Did you handle that transaction?

A. Yes, sir. I got a check for it here.

Q. Whom did you pay?

A. Paid it to Mr. Borcharding.

Q. How much? A. \$1500.

Q. Have you got a check for that?

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

A. I have; paid it to California Veneer [46] Company.

Q. That was the purchase price for that timber?

A. Yes.

Mr. Speer: What's the date of the check?

A. February 27, 1946.

Mr. Quinn: Did you pay any other monies on that deal?

A. Well, I have to go through these tax records down there. If the money was received from me I paid them.

Q. Have you got a record of that transaction?

A. This one here.

Q. In your book?

A. I imagine there is; there's a check here for it.

Q. Outside of the check?

A. Well, I think so.

Q. Did you pay any taxes on that property involved in that deal?

A. I think the taxes were paid on that.

Q. Did you pay them?

A. I think he paid them.

Q. You mean Mr. Agnew?

A. No; Mr. Borcharding; he is one of the owners of the California Veneer; it is in his name, but I paid California Veneer.

Q. Did you have a transaction with Emery Mitchell and his wife who signed a deed to Mr. Agnew?

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

A. Yes, I went over to the sale and bought those claims.

Q. I am asking you about the deed from Emery F. Mitchell and his wife? A. That's right.

Q. Did you pay them?

A. No, I didn't pay them.

Q. Did you deliver a check to them?

A. No.

Q. To whom?

A. I delivered a check to Trinity County.

Q. How much was it?

A. Oh, three thousand and some odd [47] dollars.

Q. Have you got the check?

A. That's the balance; I got a letter over there. I had to send them a draft for that; they didn't take anything but a draft.

Q. A receipt dated April 2, '44—received from Sam J. Wilson \$2000.00.

A. There was more than that.

Q. That's what it says on here.

A. That's the balance.

Mr. Quinn: I will read what this says: April 2, 1944, received from Sam J. Wilson \$2000.00 part payment on tax deeded property; \$1350 due plus advertising \$6.50, total \$1356.50, pmt. 960 acres Hyampon district.

Q. How did you pay that?

A. Paid it with draft.

Q. Have you got the draft?

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

A. No; but I sent them a draft for it, bank draft.

Q. Can you get the draft?

A. I could if I went to the bank, I presume.

Q. That draft would be down in the bank—your own draft, was it?

A. No, I bought a bank draft.

Q. That's what I mean.

Q. Mr. Wilson, did you have a transaction with several people by the name of Andrewsen and Kane—in Humboldt County?

A. Oh, I bought a piece of timber from them.

Q. 160 acres? A. Yes.

Q. Who did you deal with in that?

A. I forget.

Q. How much did you pay them?

A. I don't remember that.

Q. You have no recollection how much you paid them? A. No. [48-49]

Q. The date of the deed was November 27, 1945.

A. I know it was more than \$2000.

Q. You know it was more than two thousand. Would it be that much—I notice revenue stamps \$3.30? A. Well, I don't remember.

Q. Then you paid them \$3000?

A. I don't remember.

Q. But you do remember you paid them more than \$2000? A. Well, as I recall.

Q. How did you pay them?

A. I don't recall that.

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

Q. Did you give them a check—one of your own checks? A. I don't recall.

Q. Did you pay them by draft?

A. I probably did, the final payment.

Q. Or did you pay them by cash?

A. No, I always used a draft.

Q. Then you either paid it by draft or check?

A. That's right.

Q. Were there taxes to be paid on that?

A. I have forgotten.

Q. Did you draw on Mr. Agnew for that?

A. Yes, I think I drew on him for \$7500 or something for what I bought for him down there.

Q. That is you drew?

A. Yes, there were other pieces there, too.

Q. Well, there are two deeds from the Andrews, both dated on the same date—November 27, 1945. You drew on Mr. Agnew for \$7500 to cover that?

A. I don't remember whether that is the amount or not. I drew \$7500; I was to buy that stuff I bought; I have forgotten [50] the number of pieces.

Q. For the two pieces, how much did you say?

A. I don't know.

Q. How much did you pay for this section?

A. I had a deal with him; he was to pay me \$2000 a quarter for what I picked up down there.

Q. Two thousand a quarter?

A. That's right; I didn't buy very much for him.

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

Q. Then if there were 4 quarters you would have paid \$8000? A. That's right.

Q. That is your best recollection now? That's what you paid to Kanes and Andrewsens for their timberland?

A. There's another one in there, too. Maggie Bowersox.

Mr. Quinn: That is here, but I didn't understand that had anything to do with the Kane and Andrewsen.

The Witness: How much was the Kane and Andrewsen all together—how much acreage?

Mr. Quinn: One deed calls for 240 and the other for 320 acres. How much did you pay them for that?

A. I don't recall what I paid them for that; I know there was a lot of taxes there to pay.

Q. You stated a while ago you paid \$2000.

A. I told Mr. Agnew I would sell them to him for \$2000 each if I found anything good.

Q. You told Mr. Agnew you would sell to him?

A. I had somebody else do the buying.

Q. On the Kane and Andrewsen?

A. On about 4 quarter sections. [51]

Q. Now, then, you didn't deal with Kane and Andrewsen yourself?

A. Well, I had some correspondence with them, but I don't think I concluded the deal with them.

Q. You didn't conclude the deal? A. No.

Q. You paid Andrewsen and Kane yourself?

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

A. I don't remember when that transaction took place.

Q. You don't know whether you paid them by check or draft? You think you paid them \$8000?

A. I don't say I paid them anything. I turned them over to Mr. Agnew; that was my deal with him.

Q. You got \$8000 from Mr. Agnew?

A. That's right; that's what I recall.

Q. What I want to know now—what you paid Kane and Andrewsén for that same timber?

A. I don't remember what I paid them.

Q. Who was that that helped you?

A. Bill Kaye.

Q. He was the go-between between you and Kane and Andrewsén? A. That's right.

Q. You paid Andrewsén and Kane \$2000 on forty? A. What—\$2000, on 40?

Q. Yes.

A. I didn't say I paid them \$2000. I don't know what I paid them. But I sold it—my understanding with Mr. Agnew—he was to pay me \$2000. When I looked over some of it I didn't like it so well, so I didn't buy any more. However, what he got was pretty good claims—worth five times what he paid for them. [52]

Q. You bought that from Kane and Andrewsén then?

A. No, I was working with Bill Kaye and his brother-in-law and a couple more worked on it.

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

Q. Brother-in-law of whom? A. Kaye's.

Q. You don't know his name?

A. I don't think it makes any difference what I paid for it. I am telling you I sold it to Agnew for \$2000. He could take it or leave it.

Q. Then here was a tract of timberland you did buy yourself for yourself?

A. This piece here?

Q. Yes.

A. No, I didn't buy it for myself; I bought it for him; it went direct to him when I got it.

Q. You say you bought it; you turned around and sold it?

A. That was the understanding I had with him. He wanted some of that pine down there and that's what I was trying to get for him.

Q. Mr. Agnew had nothing to do then so far as the payment of the money to Kane and Andrewsén went? A. No, he paid me.

Q. So with your own money you paid Kane and Andrewsén? A. Yes.

Q. You didn't use any of the Agnew money?

A. None whatever. I made a deal I would sell them to him. I wouldn't say he didn't—he sent me some money for me to buy it with. I told him I was buying it for \$2000 a [53] quarter; that's what I sold it for.

Q. You mean you sold it yourself to Agnew?

A. Yes; these fellows all made money on it.

Q. You bought some timber from Maggie Bow-
ersox? A. Same thing applies to that.

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

Q. How much did you pay Mrs. Bowersox?

A. I don't recall that either.

Q. You don't recall; that was 170.59 acres. Did you sell that to Mr. Agnew?

A. Yes, sir.

Q. What did you get for that?

A. \$2000.

Q. You got three?

A. \$2000 from Mr. Agnew.

Q. What did you pay Mrs. Bowersox?

A. I don't recall.

Q. How did you pay?

A. I don't recall that.

Q. Pay her by check?

A. I don't recall how; that's an entirely separate deal.

Q. Did you pay it by draft?

A. I don't remember how I paid it.

Q. Did you deal with Mrs. Bowersox yourself?

A. No, I never saw Mrs. Bowersox; I may have had correspondence with her.

Q. You did it through correspondence?

A. Well, either that or they went over to see her directly, I have forgotten.

Q. After you got that timber from Mrs. Bowersox you turned around and sold it to Mr. Agnew?

A. That's right.

Q. For three thousand?

A. For two thousand. [54]

(At this time adjournment was taken until Saturday, July 24, 1948, at ten o'clock a.m.)

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

Saturday, July 24, 10:00 A.M.

(All parties being present, the interrogation of Samuel J. Wilson was continued as follows.)

Mr. Quinn: Mr. Wilson, did you get some property, acquire the title to it in your name from Gilbert Thorpe Land Company? A. I did.

Q. That was on about the 24th of May, 1946?

A. Well, before that, I think.

Q. By the way, you still have these lands in your name? A. That's right.

Q. You received from Mr. Agnew a draft dated March 21, 1946, for \$5000?

A. I just don't recall that draft.

Q. Wasn't that money given to you, Mr. Wilson, for the purchase of that Thorpe property?

A. It was given to me with the idea of purchasing the Thorpe property.

Q. With the idea of purchasing the Thorpe property. There was one of April 3, 1946, for \$15,800? A. Yes.

Q. Was that given to you for the purpose of purchasing the Thorpe property?

A. At the time it was given to me for that purpose, but other [55] arrangements were made.

Q. You received the money represented by these two checks? A. Yes, I did; they are signed.

Q. What did you do with this money?

A. I kept it.

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

Q. You have got it now?

A. Well, I have got it where I can get it.

Q. You never returned it to Mr. Agnew?

A. No, I had no reason to return it to Mr. Agnew.

Q. You also have the title to these lands?

A. That's right.

Q. You have never executed a deed to Mr. Agnew for them?

A. We made another kind of deal.

Q. You know the address of Mr. Sturburd?

A. No, I don't.

Q. You haven't got his address?

A. No. In fact, I never met Mr. Sturburd.

Q. You had a deal—there was property known as the Kepner property in Humboldt County?

A. Yes, that's right.

Q. Who did you deal with in that transaction?

A. Brown and Brown.

Q. Of Portland? A. That's right.

Q. They are real estate brokers?

A. They are timber people.

Q. What did you pay the Kepners for that property? A. Fifteen thousand dollars.

Q. Was there any taxes to be paid on that?

A. I think not.

Q. How did you pay that? A. Draft.

Q. You paid by draft?

A. Drew on Mr. Agnew for \$15,000.

Q. Did you get the draft yourself?

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

A. Well, I think I have it. [56]

Mr. Maloy: What was the date of that transaction; the deed was recorded in July, 1945?

Mr. Wilson: \$15,005.00 (producing draft).

Q. (By Mr. Quinn): Brown and Brown got a commission out of that deal? A. Yes, \$750.

Q. Who paid Brown and Brown?

A. The bank.

Q. Was it paid out of this draft?

A. Yes, paid out of that draft.

Q. Yes; the draft calls for \$15,000 and pay commission of \$750 to Brown and Brown?

A. That's right.

Q. You said you paid it; that was the Kepner draft?

A. I paid the Kepner draft and the bank paid them \$750.

Q. Where did you get the money to pay Mr. Kepner's draft? A. Mr. Agnew.

Q. You turned over one of the drafts you got from Mr. Agnew?

A. No, I think it was drawn direct, as I recall.

Q. You think it was drawn direct?

A. Yes; made to the bank, as I recall it.

Q. If it was made to the bank out of that you got \$750—— A. I didn't get 750 cents.

Q. Out of that amount of money you paid \$750 to Brown, out of the \$15,000 that came from Agnew?

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

A. It was understood with Brown; Brown made the deal and got his commission.

Q. Did you pay any commissions to any others in all these [57] deals?

A. No, not on that one, I didn't.

Q. I mean on any of the other deals we discussed here? A. Well, in some cases I did.

Q. Do you know which cases now?

A. Oh, I couldn't—there's a number there—about 30 of them. I couldn't tell you how they were all made.

Q. What other commission houses did you deal with beside Brown and Brown?

A. I didn't deal with any of them; bought most of it myself; he represented the people that owned the timber and naturally he would get a commission; but he got it direct from the bank; not from me.

Q. Brown and Brown got commissions on other deals, didn't they? A. Yes, they did.

Q. What other deals?

A. I think that Runnell Tract was one.

Q. How much did they get out of that?

A. I don't know.

Q. Did you pay them out of the money—

A. That was all done through Jim Bennefield. He handled that deal for an estate in the east through Brown and Brown.

Q. In the Reid deal was there a commission paid to them?

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

A. Well, there was a little; Mr. Reid was handling the deal for an estate in the east and he received some couple of thousand dollars.

Q. Mr. Reid received his commission?

A. That's what he got out of it; I have forgotten the exact amount. [58]

Q. Well, Mr. Reid sold some timber; he made some deeds?

A. He didn't own all the timber in his name; there were several estates interested in it.

Q. You say outside of what he got for his interest in the land he got a commission of \$2,000?

A. Thereabout.

Q. Which Reid is that?

A. I have forgotten his name; R. A., I think it is; I am not sure.

Q. Where does he live?

A. Well, I don't know whether he is still living or not. He was a very sick man the last I knew. He used to live in Portland. Resides down in California some place.

Q. His name is D. Reid or David?

A. That's right, David.

Q. He signed the deed. I think we went into it yesterday—one for 440 and one for 320 acres. Now, it is your contention, outside of that, what he may have got out of these deeds, he also got \$2,000?

A. That's right.

Q. Who paid him the \$2,000? A. I did.

Q. That was for a commission on the other?

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

A. It was over \$2,000. I have forgotten what it was; expenses he had going east and getting the deal lined up.

Q. How did you pay him the \$2,000?

A. I think I paid him by check.

Q. One of your own checks?

A. I guess so; I am not sure.

Q. Have you got that check with you?

A. No.

Q. Do you know where it is? [59]

A. As I told you yesterday, Mr. Quinn, I have this yellow slip here I have been after for two years; now I have something to work on.

Q. You mean the one that you got from Mr. Agnew?

A. Yes; that is the starting.

Q. But you haven't any account of your own?

A. I will work it out from here.

Q. You will work it out from the one you got?

A. That's right.

Q. I understand you have no record yourself of the money Mr. Agnew gave you that passed through your hands to the bank?

A. Yes, I have a record.

Q. Will you produce it, please?

A. I haven't got it here; but I will get it from Mr. Isaacs.

Q. You remember the Powrie deal?

A. Yes.

Q. You were trying to buy property from Mr. Powrie in Curry County?

A. That's right.

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

Q. Do you remember this check of May 22, 1946—\$25,000? A. Yes.

Q. Check to Sam J. Wilson from Agnew, endorsed by Wilson. Did you ever get the Powrie timber? A. No, I did not.

Q. Ever return that money to Mr. Agnew?

A. I did not.

Q. Still have that money?

A. I still have it.

Q. What did you do with this \$25,000?

A. I tried to buy the Powrie tract of timber and somebody else beat me to it. [60]

Q. After you lost that deal, what did you do with the \$25,000? A. I have got it.

Q. You never accounted to Mr. Agnew for that \$25,000?

A. I think I accounted to him. He told everything as the result of my not being able to make the Powrie deal and I told him the freeze was still on.

Q. What do you mean by freeze?

A. In other words—everything would indicate I was out of the picture.

Q. You were out of the picture and you hung onto the money you had?

A. No, that was the reason I hung onto the money. I asked him for a statement many, many times, and when it came to the final point of where he froze everything and we ceased to have any busi-

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

ness dealings, I simply held the \$25,000 and wrote him to that effect. Wired him to that effect; this is the first I have heard of it.

Q. First you have heard of what?

A. The \$25,000.

Q. Now you received a draft from Mr. Agnew dated July 16, '45, for \$26,000? A. Correct.

Q. I am showing you that draft. That draft was for the acquisition of timber lands in Trinity County? A. Yes.

Mr. Maloy: Tax lands. Was it tax lands?

Q. (By Mr. Quinn): No. I am going to ask you—you attempted to get hold of, over there, 13 claims? A. Correct.

Q. 13 claims at \$2,000 a claim—\$26,000?

A. That's right. [61]

Q. That deal never went through?

A. That's right. I will go on with it and tell you what happened to that money.

Q. This \$26,000 you got from Mr. Agnew for these 13 claims?

A. That's right. I told him I would try to get them; I told him that's what they wanted. He sent \$26,000. I worked on it two or three months; I didn't get the claims; part of the money used to pay county tax liens over in Trinity County; the balance was used for other purposes I could account for.

Q. What other purposes?

A. \$14,000 advanced on the hotel.

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

Q. Did you advance that? Did he get you to advance that? A. Oh, yes.

Q. Did you ask him to do that—to permit you to buy into the hotel? A. Why certainly.

Q. He was to have an interest in the hotel?

A. That's right.

Q. You have sold the hotel?

A. That's right, but I haven't paid him off.

Q. You haven't paid him off?

A. Oh, yes, I have.

Q. You put \$14,000? A. Or thereabouts.

Q. Out of this check. You received other checks about that time from him?

A. Well, I don't know what they were; maybe I can tell you.

Q. Did you receive a check for \$17,000?

A. No.

Q. Never received a check——

A. Never received a check for \$17,000 at any time. [62]

Q. By the way, when was the hotel deal?

A. In August.

Mr. Maloy: What year?

A. 1946.

Q. (By Mr. Quinn): Here's a draft for \$20,000, August 8, 1945.

A. I know nothing about a check of that kind; where is my signature on there; if I drew it, it might have my signature——

Q. Sam J. Wilson——

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

A. I don't care who he charged it to. I didn't draw it. All the drafts I drew I signed. There's no \$20,000.

Q. It is your testimony you never got that \$20,000 represented by that?

A. I never got that. When is it—1945?

Q. Yes. A. No.

Q. You never got that \$20,000 and it was never placed to your credit here? A. Never was.

Q. In any bank?

A. No. Is that October 8, 1945?

Q. October 8, 1945, yes. A. No.

Q. You deny ever having received that?

A. I deny ever having received it. Unless he sent it down and I deposited it in the bank. I am getting a record today of what I deposited in the bank to the credit of the Klamath Cedar Company. I just took it in and deposited it; I had no connection with it.

Q. Where would you deposit it?

A. Here in the Bank of America here in town in the account of the Klamath Cedar Company.

Q. Under Klamath Cedar?

A. If that was the case; I don't know; but I didn't get it. [63]

Q. Anyway you never got the \$20,000?

A. I never got the \$20,000.

Q. Did you get any part of it? A. No.

Q. What other moneys did you get from Mr. Agnew that you put into the hotel?

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

A. That's all.

Q. Did you get a check for \$17,000?

A. I didn't get any check for \$17,000, or any part of it.

Q. How much did it cost you to buy into that Lauff Hotel?

A. Cost me about fifty some odd thousand.

Q. Mr. Agnew put up \$43,000?

A. He put up \$29,000.

Q. He put up \$29,000?

A. And a fraction; I forget; that's all the money he put in the hotel.

Q. When you sold the hotel he was to get half?

A. I made a deal with him on the hotel months before the sale.

Q. That deal was when you sold it you were to divide it up? A. No.

Q. You were to get fifty-fifty on it?

A. I gave him a note for that; he didn't want any part of the hotel; didn't want anybody to know he was interested.

Q. You gave him a note?

A. That's right.

Q. How much?

A. \$29,700 and some odd dollars.

Q. In other words, according to you, he was to have no interest in the hotel?

A. He didn't want any interest in the hotel. [64]

Q. You gave him your note for \$29,000 to cover the amount of money he advanced you?

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

A. He didn't want in the hotel.

Q. When did you make out that note?

A. Oh, along in February.

Q. February of '46? A. Yes.

Q. That you gave him that note—where did you make up the note? A. I made it up here.

Q. Did you make it yourself?

A. No; I don't know; I know I didn't because I can't type.

Q. Now, there's an Evans deal; you made out in Curry County a deed to Evans as Trustee?

A. Yes.

Q. How did you sign that deed to the Evans Products Company?

A. Because at the time it was part of the transaction on the county land and, as I recall, it had not been deeded to Mr. Agnew at that time; it was still in my name.

Q. How is that?

A. It had not been deeded to Mr. Agnew at that time; still in my name.

Q. Holding it in trust for Mr. Agnew?

A. No; yes, I was holding it in trust for Mr. Agnew.

Q. This timberland that you deeded to the Evans Product Co.?

A. I didn't deed any timberland; just deeded the cedar rights.

Q. Whatever it was you didn't deed any land to them; just cedar rights?

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

A. Yes; the Evans Products Company deeded to Mr. Agnew in return. [65]

Q. You got a deed from Margaret Ward Riddell dated—doesn't seem to show the date—I think in '45, recorded in volume 32, page 479——

A. From whom?

Q. Margaret Ward Riddell to Sam J. Wilson, an undivided 10/25 interest——

A. That was just about 2 months ago I got that deed.

Q. You got that deed about two months ago?

A. That's right.

Q. Does that property still stand in your name?

A. Yes, sir; always belonged to me.

Q. Did you pay for it yourself?

A. I sure did.

Q. You didn't use any of Mr. Agnew's money?

A. I did not.

Q. How much did you pay?

A. A thousand and some odd dollars. You mean to her? I paid her three thousand.

Q. As I understand that was your own money?

A. Well, I hope so. I just bought it about 2 or 3 months ago.

Q. The deed I am referring to here, Mr. Wilson—well, we have not the date of the deed here, but we have the volume——

A. I filed it with the recorder about 2 or 3 months ago.

Q. When did you transact the deal?

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

A. About 2 or 3 months ago and recorded it, the day after I got it.

Q. Where did you get the deed from?

A. Mrs. Riddell.

Q. Directly from her?

A. Directly from her.

Q. Was it in escrow?

A. Yes, in the bank down here. [66]

Q. You don't remember the date of the deed?

A. No, but I can get the record very easy.

Q. Where is Mr. Runnell? You got a deed from him?

A. He has been dead a long time ago. I bought that through Brown and Brown.

Q. Did you have any contact with Muriel W. Reynolds, a widow? A. No.

Q. Did Brown and Brown get a commission on that? A. I imagine they did.

Q. Did you pay the commission? A. No.

Q. How was that commission paid, do you know?

A. Well, I paid—I forget what it was; whatever it was they got 5 per cent.

Q. Now, Mr. Wilson, you received a check in your name for the sum of five hundred and ten—

A. From whom?

Q. I am not asking you anything; I am calling this to your attention—you received in checks made payable to you and are cashed and are here in evidence:

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

1	.....	\$ 510.00
1	.....	5,000.00
1	.....	801.00
1	.....	568.96
1	.....	5,000.00
1	.....	5,641.00
1	.....	15,000.00
1	.....	2,500.00
1	.....	1,500.00
1	.....	3,500.00
1	.....	10,000.00
1	.....	5,000.00
1	.....	25,000.00
1	.....	1,760.00
1	.....	300.00
1	.....	264.00

Total\$89,544.96

What did you do with that money?

A. You say that many checks?

Q. Yes.

A. That all went to timberland and taxes.

Q. Will you tell me what you did with it?

A. I said it went for timberland and taxes.

Q. You specify.

A. How can I specify? Do you think I am a mindreader?

Q. Well, you are handling somebody else's money?

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

Mr. Maloy: That is objected to as incompetent, irrelevant and immaterial and not within the issues and I instruct the witness not to answer.

Mr. Quinn: All right; the record is in.

Q. Will you state, and give us now, and tell us now, what you did with \$89,544.96 that you received in checks from Mr. Agnew?

A. I bought timberland and paid taxes.

Q. That is not the answer.

Mr. Maloy: That is sufficient answer. I object to the witness giving any other or further answer and instruct the witness not to answer any further.

Mr. Quinn: Will you tell us which timberland and how much you paid for each piece?

Mr. Maloy: Same objection. It has been gone over piece by piece; repetitious, incompetent, irrelevant and immaterial, and not within the issues and I instruct the witness not to answer. [68]

Mr. Quinn: There are two additional items we have not been able so far to produce the checks—one for \$10,000 and one for \$17,000——

A. I didn't receive any \$17,000 and the \$10,000 I can't say—no \$17,000 check was ever given to me or credited to me.

Q. If you got the \$17,000 check what did you do with it? A. I didn't get the \$17,000.

Q. Never got it?

A. No. The \$10,000 check, the same thing. I did get some \$10,000 checks; I don't know which you refer to. There was never a \$17,000 check.

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

Q. What did you do with the \$10,000?

A. If I got it I will be able to account for it.

Q. Can you tell us now what you did with that?

A. I don't know; a lot of stuff over a period of years.

Mr. Maloy: I object to that; don't answer any further.

Mr. Quinn: Now, you received the following drafts:

1\$ 8,549.14

1 11,500.00

A. That draft was returned——

Q. Just a minute—I am not through with my question.

Mr. Maloy: You don't need to answer this; I am going to object.

Mr. Quinn: One for \$7,001.60——

Mr. Maloy: Don't answer until I instruct you.

Mr. Quinn: \$7,500; \$26,000; \$20,000; \$10,000; \$96,340; \$5,000; \$15,800. Total, \$207,690.74.

Q. Now, Mr. Wilson, what did you do with that money? A. How could I say what I did.

Q. What is that?

A. I can't tell you. [69]

Q. You can tell what you did?

A. I bought timber and paid taxes with it.

Mr. Maloy: That's sufficient answer.

Q. (By Mr. Quinn): Will you tell me what timber—and what taxes you paid?

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

A. Well——

Mr. Maloy: Objected to as incompetent, irrelevant and immaterial; all gone over; repetition; immaterial and I instruct the witness not to answer the question.

Q. (By Mr. Quinn): Did you use any of that money for any other purposes than to purchase timber? A. To pay taxes.

Q. To pay taxes; any other purpose——

A. Well, there might be some of that money was used, was deposited to the Klamath Cedar; I will check my account on that; he mailed me checks and I deposited them to Klamath Cedar.

Q. You deposited them to Klamath Cedar?

A. That's right.

Q. Outside of what you might have deposited to Klamath Cedar?

A. Oh, I paid other bills for him.

Q. What bills? A. I rented a millpond.

Q. How much was that?

A. I think one check for Klamath Cedar paid me for the amount of money I paid for the millpond—I have forgotten; five or six hundred. I bought some lots pertaining to the mill down there.

Q. You bought some lots pertaining to which mill? A. Klamath cedar mill; odd lots. [70]

Q. What was this money given to you for by Mr. Agnew? A. For the purchase of timber.

Q. Purchase of timber?

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

A. Besides I done many other little things for him, too, you know.

Q. Out of this money then, I understand you to say you have not paid any of it out for anything but timber, or you might have reimbursed the Klamath Cedar Company——

A. There was other taxes; taxes on the mill.

Q. What taxes did you pay?

A. I have to get that record together.

Q. You haven't got that?

A. I will have it.

Q. Have you anything else you paid any of it on?

A. Might find something in the records.

Q. Did you use any for cruising?

A. Some of it.

Q. How much?

A. Oh, altogether maybe a couple or three thousand.

Q. What other thing did you use it for?

A. I handled all of Mr. Agnew's business down here; there might be a lot of things.

Q. You mean by that you handled it in reference to the mill?

A. I handled it in reference to everything excepting the operation of the mill.

Q. You handled all his business excepting the operation of the mill. What do you mean, here?

A. Here and in Oregon.

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

Q. That only had reference to the purchase of timber?

A. Well, there were mills involved, too, you know. [71]

Q. Mr. Agnew only operated one mill and that was the one down near Klamath?

A. He bought one up at Port Orford and that gave us an awful headache you know.

Q. He never acquired that?

A. I put up a lot of money on it; insurance and other things.

Q. Now, you were served with a subpoena duces tecum and in that it was provided you bring here an itemized statement of the moneys—what you did with this money.

A. I am sorry, Mr. Quinn, I have not been able to do it; but I will have to eventually do it.

Q. Are you claiming anything in this action on account of expenses and maintaining your office?

A. No.

Q. Or for secretarial help? A. No.

Q. Or telephone? A. No.

Q. Are you claiming anything for traveling expense?

A. No. Never sent in expense account or anything. In fact I never worked for Mr. Agnew on a salary.

Q. As far as cruising was concerned you only paid out about two or three thousand dollars?

A. Thereabouts.

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

Q. Did you cause any of the lands to be surveyed? A. Yes, I had some of them surveyed.

Q. Did you present Mr. Agnew a bill for that?

A. No. Only where it involved something like this Kane deal where we had a contract with Mr. Kane for a certain amount of timber.

Q. Have you got a contract? Did you have a contract with [72] Mr. Kane?

A. Mr. Agnew had a contract with him.

Q. Do you mean by that the Andrews-Kane deal?

A. No, it was on the mill he was going to build up here north of town. We agreed to furnish him the timber for, I think, 3.25 a thousand.

Q. Was there money paid out on that?

A. Yes, quite a little money paid out on that.

Q. Was the money you received from Mr. Agnew paid out on that?

A. No, I never sent him a bill for it.

Q. You never sent him a bill? A. No.

Q. How much was due on that—do you claim due? A. Well, odd amount—

Q. Would you give us—

A. Some idea? Maybe \$1,500.

Q. That's on account of contract for the furnishing of logs for a mill to be erected, is that it?

A. That's right.

Q. With Mr. Kane? A. Yes.

Q. Did you ever put in a charge for getting together these various contracts? A. Well, no.

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

Q. You never made any charge; you haven't got any record or statement of how much that cost to get hold of a certain tract of timber?

A. That was our deal.

Q. That was your deal—what do you mean?

A. That was the deal; I was to get a cut on the property.

Q. That was the deal where you got a cut on the property. Have you got a statement of the amount of taxes that you paid on these various pieces? [73]

A. I gave you a rough idea yesterday but I haven't had a chance to go through it.

Q. Have you a statement regarding it?

A. No, not a full statement.

Q. Now, you don't know how much you paid out on taxes? A. No, but the county does.

Q. You never kept a record?

A. I kept a record, but I want to check with the county to know whether he paid it or I paid it. The whole contention here is I asked for a statement to know what he paid and what I paid.

Q. How long have you known that this deposition and hearing was to be held yesterday?

A. Oh, I have known it for quite some time.

Q. Quite a long time. This was served on you way back in May?

A. Well, Mr. Quinn, I think I have furnished as much as Mr. Agnew furnished. There are a lot of checks there. The \$17,000 and the \$10,000 I never got, and a few other things.

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

Q. That's all right.

A. He didn't come in with a complete list by any manner of means, did he?

Mr. Quinn: Let me ask you: Of these amounts—checks were drawn, one for \$4,496.36——

Mr. Maloy: Going over the same thing again?

Mr. Quinn: No. [74]

The Witness: Have you a check for that much money there?

Mr. Quinn: I think so, Mr. Wilson; it is not directly to you.

Mr. Maloy: Unless it is shown that Mr. Wilson had something to do with these checks you need not ask him about them.

Mr. Quinn: Here is the check I was referring to. (Check handed to Mr. Maloy.)

Mr. Maloy: Of course you can ask him about it; I don't see how he can tell you anything; I can't.

Mr. Quinn: Check dated September 28, '43, drawn on Centralia Branch National Bank of Commerce for \$4,476.36.

The Witness: Where did I get this?

Mr. Quinn: I am showing you that check.

A. I don't remember anything about it. No endorsement on it—where does it concern me?

Q. Here's one to Harold A. Miller, January 2, 1945—— A. That's right.

Q. \$20,000? A. Yes.

Q. You know about that? A. Yes.

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

Q. How is it you didn't complete the deal with Kay—these 13 claims in Trinity County?

A. The reason I didn't complete it was because somebody else paid more money.

Q. Now, you got some of that Clutter property in your own name?

A. I put it in my own name.

Q. You still have it?

A. I still have it; I am not in the habit of buying timber for somebody without a good title. [75]

Q. Was that bought for Mr. Agnew?

A. I talked to Mr. Agnew about it; I could never get the title; I haven't got it worked out yet. I wrote Mr. Agnew and told him the title was not good and I would take it myself.

Q. Take it yourself?

A. Yes; we discussed it; I wrote about it two or three times.

Q. That was part of the same land as the Brukman and Russ? A. Yes.

Q. Was this an undivided interest in that or was the Clutter deal separate property?

A. Clutter was separate property; no, Clutter was all one and the same thing; Clutter, trustee. The title company would not recognize it.

Q. These are different tracts?

A. No, all one tract.

Q. Then you got an undivided interest in it—or a whole interest in a certain part?

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

A. I got interests as I bought them from time to time.

Q. How much did you pay Clutter for it?

A. For the right Clutter had I paid him around \$2,000.

Q. How did you pay him?

A. Well, I had a draft, I think.

Q. Did you deal with Mr. Clutter directly?

A. No; I dealt with his attorney.

Q. Who is his attorney?

A. Oh, I forget the name. Way back in Kansas. Mr. Maloy: Wichita, Kansas.

The Witness: I worked on it three years and have not got it all [76] together yet; so I am not in the habit of turning over bad titles to anybody.

Mr. Quinn: I understood you to say that was your timber and you are not turning it over.

A. It certainly is my timber; I paid for it.

Q. Yes. Did you use any of the money Mr. Agnew had given you? A. I did not.

Q. To pay for it—how did you pay for it?

A. I paid for it with draft.

Q. Where is the draft—could you produce it, please? What bank did you draw that draft on?

Mr. Maloy: We can show the receipt for it; have it somewhere.

A. I have forgotten; it would show there if they find it.

Mr. Quinn: How much did you sell the Lauff Hotel for?

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

A. Oh, I have forgotten; \$150,000 or \$160,000.

Q. How much? A. \$150,000.00.

Q. When was it you resold that?

A. August, 1946.

Q. Did you get the money for it? A. Yes.

Mr. Maloy: You need not answer any more questions concerning the Lauff Hotel.

Mr. Quinn: Did you make any accounting to Mr. Agnew?

A. I had no reason to make any accounting to Mr. Agnew. Mr. Agnew doesn't appear in any way.

Mr. Maloy: You need not answer any further.

Mr. Quinn: Did you have anything to do with J. Tyson in that Clutter deal?

A. Never heard of him.

Q. How did you pay that—where did you [77] pay it? A. I paid it to that bank there.

Q. This bank here is the bank here; is the bank in Eureka? A. That's where I paid it.

Q. Bank of America? A. Yes.

Q. How did you pay it?

A. I can't tell you offhand; it is paid, isn't it?

Q. Did you pay by cashier's check?

A. I don't recall.

Q. Did you ever pay any of these deals by cashier's check? A. Some of them.

Q. Does that refresh your memory there—it says on the bottom of it——

A. That's what I paid it with—cashier's check.

Mr. Quinn: This is a receipt, Eureka Branch

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

124. Bank of America, Eureka, acknowledged 8-25-45 and dated received 8-25-45, dated 8-21-45, Sam J. Wilson, Eureka, California. Letter on file. Amount \$1997.80. Down at the bottom it says Cashier's check payable to Charles Clutter.

Q. Was there any other business dealings on that? A. That's all.

Q. Is this the same deal that Reid got \$2000 on?

A. No, Reid had nothing to do with that.

Q. What did you do with this \$26,000, dated July 16, 1945? This shows Sam J. Wilson, Eureka Branch, Bank of America, Eureka, California, \$26,000. Sam J. Wilson. Did you deposit that in your account or what did you do with the actual money?

Mr. Maloy: Object to that as repetition; all gone over 2 or 3 [78] times You need not answer the question.

Mr. Quinn: Here's another one. November 15, '45—at sight—Sam J. Wilson—\$10,000.

Mr. Maloy: Objected to. You need not answer the question. Mr. Wilson; it has all been gone over time and again.

Mr. Quinn: You got that \$10,000?

Mr. Maloy: That is objected to; don't answer the question. Repetition; gone over 2 or 3 times.

Mr. Quinn: Then you refuse to tell us whether or not—

Mr. Maloy: I refuse to let the witness answer,

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

put it that way. May I see that last item you were discussing—\$10,000?

Mr. Quinn: Look at the check.

Mr. Maloy: I withdraw the objection; that has not been before us.

The Witness: This is for taxes.

Mr. Quinn: You received that draft?

A. That's right.

Q. What did you do with the money?

A. I don't know offhand.

Q. Did you deposit it in the bank to your credit?

A. I presume I did.

Q. You don't know which account?

A. I only have one.

Q. Yesterday you said you had three.

A. Well, I said I done business in 3 different banks. Over a period of five years.

Q. Which bank do you do all your business with so far as business with Mr. Agnew was concerned?

A. Part of the time here and part of the time in Eureka; part [79] of the time in Gold Beach.

Q. You deposited these checks in different banks?

A. Well, I can tell where I deposited them; now that you give me this lead I will have to try to finish the job; I will be able to account for it.

Q. You will do so?

A. I will have Mr. Isaacs finish the job.

Mr. Quinn: Here's a check dated March 29, 1946, \$5000, endorsed by you.

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

A. We took that up yesterday; I don't know.

Q. What did you do with that?

A. I probably deposited it in the bank.

Q. What timber did you buy with the money you got from this check?

A. I don't recall; might be a balance due; might have been.

Q. If you didn't apply it on timber, did you apply it on anything else?

A. I could have deposited it in the bank to the credit of the Klamath Cedar Company.

Q. Here's one dated April 20, 1945—\$10,000—endorsed by you.

Mr. Maloy: Don't answer that last question. It has been gone over. How much is that?

Q. \$10,000—what did you do with that money you received from that check?

A. I couldn't tell you offhand. I am trying to figure. I see it is deposited in the Seattle Branch of the National Bank [80] of Commerce; I don't remember doing any business up there.

Q. This check was drawn on the Centralia National Bank of Washington. \$10,000. You don't know what you did with the money you got for this check?

A. Not right offhand.

Q. Here's one dated March 8, '44, for \$5000, endorsed by you. What did you do with that money?

A. I will have to go to the bank and go through the whole record.

Q. Where did you deposit the check?

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

A. Probably deposited it here. I don't see any bank on the back of it.

Q. Do you know what account you deposited it in—which one of your accounts?

A. I couldn't tell you.

Q. Here's a check—6-28-45, \$15,000, signed by Agnew, endorsed by you—did you receive such a check? Did you cash it? A. I sure did.

Q. Where did you deposit the money?

A. I think that went to—that \$15,000 went to the Kepner Tract.

Q. Did you write a check out? You think the \$15,000 went to the Kepner tract; did you write a check out yourself? A. I believe I used this.

Q. There is no other signature on it but your own?

A. I think the bank—Eureka Branch—— [81]

Q. Here's a check dated April 10, 1945, \$2,500 signed by J. J. Fox. What did you do with that money?

A. I think I bought some timber with that.

Q. What timber?

A. Fox bought it and gave me the \$2,500 check.

Q. Did you deposit that in your bank account?

A. I don't know that I did.

Q. Where did you deposit it?

A. Something came up pertaining to Klamath Cedar. I never got any money for Klamath Cedar unless given to me with instructions—I don't recall that now.

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

Q. Here's a check dated March 3, 1945, \$1,500.

A. Well, that was used for timber.

Q. Did you deposit that in your account?

A. I might have bought a draft for it.

Q. What timber did you apply it on?

A. You know I bought a lot of timber.

Q. Yes, you handled a lot of money, too. You haven't any check that you checked out against that to pay for that timber?

A. I will get that for you.

Q. Here's a check of March 3, 1945, for \$3,500 endorsed by you.

A. I don't understand these checks; look kind of funny to me. They are all up in Seattle; I never cashed any checks in Seattle.

Q. What did you do with this \$3,500? [82]

A. I can't tell you right off hand.

Q. You don't know on what deal you applied it?

A. I think that check was for timber I sold to Mr. Agnew. 480 acres I sold him up on Lobster——

Q. 480 acres you sold him?

A. I think that's the check; I am not sure.

Q. Where did that timber come from?

A. I owned it.

Q. When did you acquire it?

A. I bought it before I knew Mr. Agnew.

Q. Is that your signature on there?

A. Yes. I am not sure about that; but I think that's it.

Q. Here is one dated November 10, 1945, for

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

\$5,641. A. Well, that's taxes.

Q. Did you get that check?

A. I got that check to pay the taxes.

Q. Did you endorse it? How did you pay the taxes? A. I paid taxes with this check.

Q. In which county?

A. Curry County; there it is right down on the bottom. In fact I know I did.

Q. No other signature on this check beside your own.

A. All right; I paid taxes with it in Curry County.

Q. How did you pay the taxes?

A. I will get you a receipt.

Q. I want no receipt. How did you pay it—by your own check—cashier's check?

A. I don't remember.

Q. Here's one dated March 8, 1944, \$568.96.

A. Well, I think that's for some lots I bought down in [83] connection with the Klamath Mill.

Q. That's for lots? A. Yes.

Q. Did you pay for the lots?

A. I paid for the lots; that was the check he gave me.

Q. Did you pay by your own check?

A. I paid by my own check or with money, I don't know which.

Q. Whose initials are those on the back of that? That is the one that has no endorsement on it; are those your initials?

Defendant's Exhibit N—(Continued)
(Deposition of Samuel J. Wilson.)

A. I don't know how the check would be cashed without my endorsement on it in the first place; so I haven't any idea. I know I bought some lots there at that time. I wouldn't say the bank would take the check without endorsement.

Q. Who did you buy these lots from?

A. I have forgotten; several people down in Arcata.

Q. Here's another check for \$801, February 11, '44.

A. That was used to pay for some timber in Curry County.

Q. That is your signature? A. Yes.

Q. Who were you buying that timber from?

A. From the county; have you got those county deeds? You will find all that stuff in there. These checks you refer to.

Q. Only this check?

A. I have some more of the same kind.

Q. You didn't turn this check over, did you, to the tax collector or the Curry County officer up there?

A. Why, here it is; pay to the order of any bank Curry County, Oregon; could have been.

Q. That is the stamp you are reading. [84]

A. All right; well, that is where it was used and what it was used for.

Mr. Quinn: Mr. Wilson, since we adjourned last night and reconvened this morning—have you

Defendant's Exhibit N—(Continued)

(Deposition of Samuel J. Wilson.)

brought in any of those records I asked you for yesterday—ledgers, or——

A. Only one I could pick up down there; the draft I showed you there.

Q. You have not brought in any of your book accounts? Bank statements or bank books?

Mr. Maloy: He said he didn't have any. It is all repetition; you went over it yesterday; he told you what he had.

Mr. Quinn: You have a bank book in which all these accounts——

A. I have none with me.

Q. You have statements from the bank?

Mr. Maloy: He need not answer these questions. I would object to them if brought in any way; under the subpoena you have it was too general. I would not let him bring them in any way.

Mr. Quinn: That is all.

.....,
SAM J. WILSON. [85]

State of California,
County of Del Norte—ss.

I, George T. Berry, Jr., Justice of the Peace in and for the County of Del Norte, State of California, hereby certify as follows, to wit: That Samuel J. Wilson, the defendant and cross-plaintiff in the above-entitled action, produced as an adverse wit-

Defendant's Exhibit N—(Continued)

ness by plaintiff and cross-defendant under Section 2055 of the Code of Civil Procedure, appeared before me on the 23rd day of July, 1948, at two o'clock p.m., at the courtroom in the courthouse in the City of Crescent City, County of Del Norte, State of California; that before the taking of said deposition said witness was by me first duly sworn to testify to the truth, the whole truth and nothing but the truth, in the testimony he was about to give in said action; that said witness was thereupon examined by counsel for plaintiff and cross-defendant on oral interrogatories, and that said witness made answers thereto under oath as hereinbefore contained; that all of said questions and all of said answers thereto were by Margaret Duffy, a competent shorthand reporter, duly sworn therein, taken down in shorthand and later transcribed into typewriting, as hereinabove contained, all of which was done under my direction and supervision; that said deposition was carefully read by the witness and corrected by him in any particular he desired and then subscribed by said witness in my presence.

And I further certify that I am not nor is said shorthand reporter a party to, or interested in the above-entitled action.

And I further certify that I have written my initials near each and every correction made by said witness.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at the City of Crescent

Defendant's Exhibit N—(Continued)

City, County of Del Norte, State of California, this
..... day of, 1948.

.....,
Justice of the Peace in and for the County of Del
Norte, State of California.

Received in evidence October 25, 1955.

DEFENDANT'S EXHIBIT P-1

Sam J. Wilson
Box 847
Redwood City, Calif.

Jan. 22, 1944.

S. A. Agnew,
Centralia, Wash.

Dear Mr. Agnew:

I am enclosing copy of a letter from Newhouse in reference to Sec. 20, TS37, SR14. I guess Mr. Dimmick must have found a little cedar as well as fir. I don't know what your attitude is in this matter but from what I know the surveys are not too accurate, and this might be a cheap way of locating the corner. Write me at Gold Beach if you want the survey made and I will arrange with Newhouse.

I am also enclosing copy of letter from A. E. Bradford, Marshfield, Oregon, re the Black River Falls tract. I don't think there is any rush about this, and from what you said, on the phone, maybe,

you don't want it. However, from the tone of the letter, I think you can get it at your own price.

Yourse truly,

/s/ SAM J. WILSON.

(Enc.)

DEFENDANT'S EXHIBIT P-2

Kidwell & Darrah
Attorneys-at-Law
206 Beacon Building
Wichita, Kansas

February 3, 1944.

Mr. Sam J. Wilson,
Redwood City, California,
Box 847.

Dear Sir:

Re: Oregon timber land.

In reply to your letter of January 28th, Mr. Clutter will not accept your offer of \$2,000.00. He asks that I inform you that he will not consider any offer of less than \$4,000.00 for the deeds and assignments as set forth in my letter of January 24th.

Very truly yours,

DALE KIDWELL,

/s/ DALE KIDWELL,

Of Kidwell & Darrah.

DK/J

P.S. A typographical error appeared in my letter of January 24th in which I listed the "Franklin" heirs. This should have read "Brinkman" heirs. The same correction should be made in your letter of January 28th.

D. K.

DEFENDANT'S EXHIBIT P-3

S. A. Agnew Lumber Company
Centralia, Washington

February 11, 1944.

Mr. Sam J. Wilson,
Box 847,
Redwod City, Calif.

Dear Mr. Wilson:

We have decided to cruise the Halaway tract at the head of Coos River, and as soon as you feel better, wish you would proceed to Coquille and arrange accommodations for McCutcheon and Sherwood. Also see if you can rent a truck for transportation to and from the job.

What has Bankus decided to do, he has had plenty of time to make up his mind, and unless your proposition is accepted right away, withdraw the offer. As you know Manning is not enthusiastic about the purchase of this timber.

I will forward all the documents, maps, etc., on the Coos River tract to the Coquille Hotel, Coquille.

Would suggest that you have Newhouse make the survey in Hunters Creek as per your letter of the 4th.

With best wishes,

Yours very truly,

S. A. AGNEW LUMBER CO.,

By S. A. AGNEW.

SAA

LM

DEFENDANT'S EXHIBIT P-4

Sam J. Wilson

Box 847

Redwood City, Calif.

Feb. 15, 1944.

Mr. Elmer Bankus,
Brookings, Oregon.

Dear Elmer:

Enclosed you will find copy of a letter from the Big Boss which is self explanatory.

Now, Elmer, if we are going to do any business, let me know right away in care of the Coquille Hotel, Coquille, and I will meet you in Gold Beach and close the deal.

With kind personal regards, I am,

Yours truly,

/s/ SAM J. WILSON.

DEFENDANT'S EXHIBIT P-5

Sam J. Wilson
Box 847
Redwood City, Calif.

July 30, 1944.

S. A. Agnew,
Centralia, Wash.

Dear Mr. Agnew:

I am just in receipt of a bill from the Curry County Abstract Company together with a title policy on the Reid tract which you will find enclosed. This bill, of course, includes everything for the past year and for this reason I think it is reasonable and wish you would mail check to cover.

I also received the title policy on the Lobster Creek tract I sold you together with his bill for which I mailed him a check today. This policy you will also find enclosed.

I have written Bedingfield regarding his bill for services and made mention of his charge of \$100 for his trip to Gold Beach to file foreclosure proceedings, and suggested that in the final settlement on the mortgage foreclosure this be taken into consideration, therefore, I think it okey to mail him his check.

I received a copy of Buffington's letter to Mr. Bedingfield in which Buffington stated that I made him a proposition, which is not true, I just listened

to his story and told him I would take the matter up with you, and if you were interested, which I didn't think you would be, I would contact him. So the proposition set forth in his letter was really his own proposition, and, of course, should be taken with a grain of salt. I have written Bedingfield to that effect.

I also received a bill from Keith Leslie, certified public accountant, for services in securing data on the indebtedness of the Port Orford mill company, and some time spent on the Bankus timber deal trying to arrive at a sale price on the Brookings timber. I think the bill is enough but should be paid. I wish you would also make a check to cover.

With kind personal regards, I am,

Yours truly,

/s/ SAM J. WILSON.

DEFENDANT'S EXHIBIT P-6

Sam J. Wilson

Box 847

Redwood City, Calif.

July 30, 1944.

Mr. S. A. Agnew,
Centralia, Washington.

Dear Mr. Agnew:

I was unable to locate Brown regarding the car loadings but will see him on my return. Tell Jack

I couldn't locate the kind of loading tongs he wanted so he better bring some down.

One of the heirs of the Frick Estate is bucking on signing the deed so will take care of that tomorrow.

Am going to have my glasses changed and will get out of here Wednesday.

I am wondering if you still want the log pond? I suppose Joe will have the answer when I get there; if so will see Mrs. Moore at Crescent City.

I wired Kay to get busy on the Freeman timber. It looks as though Buffington is about ready to throw in the sponge from the tone of Bedingfield's letter, so this will release the mill machinery at Port Orford.

I will go on up to Marshfield on this trip and find out what is going on, and then get busy on some timber near the mill. I will also feel Pucket out on that Section. I don't think of anything else right now. Will contact you later.

With kind personal regards, I am,

Yours truly,

/s/ SAM J. WILSON.

DEFENDANT'S EXHIBIT P-7

[Letterhead]

Wilson Timber Company
Eureka, California

October 24, 1944.

Mr. S. A. Agnew,
Agnew Lumber Co.,
Centralia, Wash.

Dear Mr. Agnew:

I called Mr. Groom of the California Barrel. He informed me that they will gravel the road into Pucket's property weather permitting. This of course, is uncertain. Pucket was in yesterday and is anxious to make a deal and believe the price can be lowered considerably.

If you really want the property, I am enclosing a copy of letter from Miller under date of October 19, I am also enclosing a copy of wire received this a.m. I called him this afternoon and he seemed very disturbed about the tax situation. You will notice after reading the letter and wire, that he is somewhat changeable.

He did say on the phone however, that he might consider selling at one dollar and a half per M, on both fir and redwood in Section Twenty, guaranteed cruise. I understand although it has not been confirmed that the redwood mill has changed hands. This being the case, possibly you could sell the redwood to them.

After it is all said and done. It might be necessary to log the Reynolds tract and sell part of the logs to the mill at Smith River. However, if you think the Miller timber on Section Twenty is worth a dollar and a half per M. I believe I could go up there and make a deal with him. In case you want it, wire me and I'll make the trip.

While I didn't mention anything over the phone regarding the Jones Creek deal. He did intimate that he would take twenty thousand dollars and you assume the taxes.

In his letter to me you will note in the enclosed copy he is asking for a price on your holdings. Therefore it might be possible that a trade could be made for Section Twenty and other fir they own in that vicinity. This is just a thought, but at any rate so far as Jones Creek is concerned, I would suggest that we just let him sit and he might thaw out.

The timber referred to in my wire is really good and can be bought for around a dollar per M. Considering the location, I consider it an exceptional buy. If you could make a deal on Hunters Creek and get your money out of the mortgage. I think it would be a wise move and if you could see the timber I am positive you would agree with me.

I talked to Bedingfield on the phone this afternoon and he said the sheriff is preparing to take over Friday or Saturday. With the understanding

he would advertise for bids upon instructions. Let me know your wishes in these matters.

With kind personal regards,

Your truly,

/s/ SAM J. WILSON.

SW/mb

DEFENDANT'S EXHIBIT P-8

[Letterhead]

Wilson Timber Company
Eureka, California

November 3, 1944.

Mr. S. A. Agnew,
c/o Agnew Lumber Co.,
Centralia, Washington.

Dear Mr. Agnew:

All deeds are now recorded with the exception of the first transaction made with Putter. The deed, however, was made to Erwin T. Quinn and I am not at all too well satisfied with the delay.

Of course, you remember Putter insisted that Mr. Miller have a certain right of way, I have agreed to this. But under certain conditions first, that Miller not be allowed to use any roads that you may build, without paying for the privilege and second that

he pay for any timber he may destroy in the process of building his own roads.

Miller is one of those sharp practice right of way specialists and of course, would like very much for you to build the road so he can take his timber out.

This I wouldn't agree to. So maybe he will be glad to sell.

Putter and Quinn have agreed to submit a separate right of way contract to Miller. Along the lines I suggested and I am to have a copy in a day or two, which I will mail to you.

With kind personal regards I am,

Yours truly,

/s/ SAM J. WILSON.

SW/mb

P.S. I am just in receipt of the rough draft of the contract from Quinn, which you will find enclosed. With your approval I will go ahead and close the deal. However, think it might have a good effect if you have a few suggestions to make.

DEFENDANT'S EXHIBIT P-9

[Letterhead]

Wilson Timber Company
Eureka, California

November 7, 1944.

Mr. S. A. Agnew,
c/o Agnew Lumber Co.,
Centralia, Washington.

Dear Mr. Agnew:

I am just in receipt of a letter from Mr. Ed Fletcher, who represents the following companies—The Ward Redwood Co.; The Blue Creek Redwood Co.; The Marguerette Ward Co.; also The National Bank of Bay City, Michigan. With a complete cruise on the holdings as above set forth. Which I am mailing you under separate cover.

I mailed you cruise on The National Bank of Bay City, Michigan, holdings last week and you already have a statement on the Requa Timber Company I gave you some time ago. There is also enclosed a map under separate cover, covering the cruise on the Requa timber holdings by 40S.

Mr. Fletcher, I understand also represents the Sage Land and Improvement Co., whom I understand owns approximately 1,750,000 feet of timber which is shown on the map I am enclosing in this letter.

I am writing for a complete cruise on the Sage holdings. Mr. Fletcher has particularly requested

that this map be returned. I also received a copy of a letter addressed to Jack.

You will note on the map that a good portion of the Sage holdings are pretty well out of the Redwood belt. And I am informed that they have considerable fir. At any rate, as soon as I receive the cruise, I will mail you a copy.

With kind personal regards I am,

Yours truly,

/s/ SAM J. WILSON.

SW/mb

DEFENDANT'S EXHIBIT P-10

(Copy)

Wilson Timber Company
Eureka, Calif.

January 4, 1945.

S. A. Agnew,
Agnew Lumber Company,
Centralia, Wash.

Dear Mr. Agnew:

I finally got the Mill deal all straightened out and will record the deeds today. Mr. Quinn is preparing a statement and same will be enclosed in this letter.

I referred to the Leonard Track last night in our phone conversation. This Track adjoins the Haight 160 and Kay says it should be acquired for right away purposes.

I will stop at Crescent City enroute to Fort Orford and will take the matter up with Helen Leonard, the owner. In the meantime, will hold up the recording of the Vancycle Deed, the John Paul Deed, the Haight Deed, and the Miller Deed, as I believe it will be easier to acquire this property before these deeds are recorded.

I am sending you under separate cover a map covering your holdings in the Jones Creek area, consisting of approximately 6,900 acres.

Will be in Port Orford tonight and will advise you regarding the situation there within a day or two.

With kind personal regards, I am

Yours truly,

SAM J. WILSON.

SJW/ej

DEFENDANT'S EXHIBIT P-11

[Letterhead]

Wilson Timber Company
Eureka, California

Jan. 4th, 1945.

S. A. Agnew,
Agnew Lumber Company,
Centralia, Wash.

Dear Mr. Agnew:

I finally got the Mill Deal all straightened out and will record the deeds today. Mr. Quinn is pre-

paring a statement and same will be enclosed in this letter.

I referred to the Leanard Track last night in our phone conversation. This Track adjoins the Haight 160 and Kay says it should be acquired for right away purposes.

I will stop at Crescent City enroute to Port Orford and will take the matter up with Helen Lenard, the Owner. In the mean time, will hold up the recording of the Vancycle Deed, the John Paul Deed, the Haight Deed, and the Miller Deed, as I believe it will be easier to acquire this property before these deeds are recorded.

I am sending you under separate cover a map covering your holdings in the Jones Creek area, consisting of approximately 6,900 acres.

Will be in Port Orford tonight and will advise you regarding the situation there within a day or two.

With kind personal regards, I am

Yours truly,

SAM J. WILSON,

By /s/ SAM J. WILSON.

SJW/ej

DEFENDANT'S EXHIBIT P-12

Western Union

[Telegram]

1945 Jan. 16 AM 8 19

PRQ2 DL PD—Eureka, Calif., Jan. 15 425P

S. A. Agnew.

Clutter Accepted Offer for Sander's Creek Timber. Arrow Mill Intimate They Will Pay \$30.00 for Cedar in Pond at Crescent City. Leaving for San Francisco Tomorrow to See Stapleton. Believe Deal Can Be Worked Out. Will Call You Tonight Regarding Arrow Mill's Proposition.

SAM J. WILSON.

\$30.00.

DEFENDANT'S EXHIBIT P-13

[Letterhead]

Wilson Timber Company
Eureka, California

March 6, 1945.

S. A. Agnew,
Centralia, Washington.

Dear Mr. Agnew:

You mentioned to me that you were looking at a power plant at Prescott which you were interested in. I believe that if you decided to put this plant

in, you could sell juice to the Klamath Power Company. Their gross runs about 1500 a month. Of course they would take the power right from the plant and therefore you would not be under any additional expense. When I go through there tomorrow will talk with Foster and if it sounds interesting will let you know and maybe something might be worked out, if you are forced to put in your own power.

My thought is, if you had fuel capacity sufficient to run the present power plant nights, with the watchman acting as engineer, it might pay out.

With kind personal regards, I am

Yours truly,

SAM J. WILSON,

/s/ SAM J. WILSON.

SJW/ej

DEFENDANT'S EXHIBIT P-14

Western Union

[Telegram]

PRQ6 NL PD—Eureka Calif Mar 13

1945 MAR 14 AM 8 28

S A Agnew—

Agnew Lumber Co

Have Learned One Small Policy Expires on the 19th. Have Instructed the Nasburg Insurance

Agency to Renew Same Unless They Receive Notice to the Contrary. In Other Words Unless the Mortgage Is Paid Off Before the 19th I Will Leave on the 15th and Will Remain in San Francisco Until the Hearing.

SAM J. WILSON.

19th 19th 15th.

DEFENDANT'S EXHIBIT P-15

Western Union
[Telegram]

1945 Mar 28 AM 8 11

PRQ17 NL PD—Eureka Calif Mar 27

S A Agnew

Agnew Lumber Co. CX

Am Working on Puckett Deal and Copy of Contract Will Be Forwarded to You Tomorrow. Just Received Letter From Bedingfield and He Suggests That You Should Not Take Less Than the Full Amount in Cash From Buffington and McDuffee. The Only Reason They Are Making the Offer Is to Protect the Boat Claim. From What I Can Gather the Government Loan Has Not as Yet Been Consummated. Mailing Draft and Contract From Standard Battery and Separator Co. Today.

SAM J. WILSON.

DEFENDANT'S EXHIBIT P-16

[Letterhead]

Wilson Timber Company
Eureka, California

March 27, 1945.

S. A. Agnew,
Agnew Lumber Company,
Centralia, Washington.

Dear Mr. Agnew:

Enclosed you will find contract signed by Standard Battery & Separator Company, also draft for \$6,259.00, which is less \$2.00 for collection charges.

The Correl Creek deal will include 14 claims at this time with a balance of 13 to be negotiated for. J. S. Moore wants \$2,000.00 per claim. I consider this the best buy I've been able to make. Red Spearing, as I told you, went out to look at the timber and is now endeavoring to horn in, but he's too late. The Moore Claims control the situation.

Puckett is a pretty hard man to do business with. He don't want to get an assignment from the Ward Estate. Says that Mr. Ward would not be in favor of transferring the property. However he is willing to make an assignment, and you probably will have no difficulty in getting the proper assignments from the Wards, because what they're looking for is their money. Mr. Mitchell is drawing the contract which

we have been thrashing over and same will be mailed to you tomorrow.

Regarding the Buffington and McDuffee deal, I think the only thing to do is to hang tough, as they will have to protect their Boat if the government loan doesn't go through. And I certainly wouldn't reduce the amount one cent.

I am enclosing a copy of a letter just received from Beddingfield, also a copy of a letter from Mr. Collier H. Buffington to Mr. Bedingfield. I think the proper thing to do is to turn the deal over to Bedingfield for collection.

While I have not been able to find out anything regarding the government loan, it's my opinion that they are experiencing some difficulty.

Enclosed you will also find copy of a letter received from Mr. Nasburg with \$8,500.00 policy covering three Willamette Utility Carriers of the Port Orford Lumber Company on which you held a mortgage. You will note by the letter from the Nasburg Insurance Agency, that the balance of \$57,000.00 on the Mill Property will expire on April 15th.

Yours very truly,

SAM J. WILSON,

/s/ SAM J. WILSON.

SJW/ej

DEFENDANT'S EXHIBIT P-18

McCutchen, Thomas, Matthew, Griffiths & Greene
Counselors at Law

July 5, 1945.

Mr. Sam Wilson,
c/o Wilson Timber Company,
218 First National Bank Bldg.,
Eureka, California.
Port Orford Lumber Company.

Dear Mr. Wilson:

Enclosed are Assignment of Mortgage, Assignment of Chattel Mortgage, and Assignment of Second Preferred Mortgage of Enrolled Vessel with the additions requested by Mr. Cooley.

Very truly yours,

/s/ CHARLES L. FINNEY.

Enclosures

DEFENDANT'S EXHIBIT P-19

[Letterhead]

Wilson Timber Company
Eureka, California

July 26th, 1945.

Mr. S. A. Agnew,
c/o Agnew Lumber Company,
Centralia, Washington.

Dear Mr. Agnew:

There are some matters to be cleared up on the timber deal, and will go to Barberville tomorrow. Will call you from there.

In the meantime, I am working out a deal with Barnum on 6 Sugar Pine claims adjoining Moore's holdings on South Fork Mt. He says they are very good claims. Moore has them under option until the first of the month, and I think it will take a few days to clean the other matter up, at least until after the first, you know what I mean.

Now regarding the Requa Timber, you will receive a letter from Mr. Barnum. It seems that he has connections with somebody that thinks he knows something about it.

I called Mr. Zorick this morning, the President of the Company, and he informed me that if the offer they now have was not accepted, he would notify me, and would be glad to talk over the Fir situation. And if the offer was accepted, he thought

the new owners would be glad to sell the Fir, as they are only interested in the Redwood. Barnum understands the situation, but the party is asking him to write you direct. I do know this, that any deal made, will have to be made direct with Mr. Zorick.

You will recall, we discussed the balance due on the timber in Curry County. I am writing for a statement to August 10th, and will mail same to you as soon as received.

With kind personal regards, I am

Yours truly,

SAM J. WILSON,

/s/ SAM J. WILSON.

SJW/ej

DEFENDANT'S EXHIBIT P-20

[Letterhead]

Wilson Timber Company
Eureka, California

Aug. 7th, 1945.

Mr. S. A. Agnew,
c/o Agnew Lumber Company,
Centralia, Washington.

Dear Mr. Agnew:

Mr. Springer of the Mohawk Lumber Company of Eugene, Oregon, spent the day with me looking

DEFENDANT'S EXHIBIT P-21

[Letterhead]

Wilson Timber Company
Eureka, California

Aug. 11th, 1945.

Mr. S. A. Agnew,
c/o Agnew Lumber Company,
Centralia, Washington.

Dear Mr. Agnew:

I am just informed that the sale to be held on the 27th in Trinity County will be offered in individual partials. And then they anticipate asking for a bid for the entire tract. And from what I gather, will sell same whichever way brings the most money. Of course you know there is a lot of goat land, therefore, I think it should be gone over very carefully. I understand Long Bell Lumber Company has a man looking over the timber now, and Goggins, the fellow that bought all the cheap timber, is also looking it over.

I am meeting Mr. Peters' cruiser in Crescent City Sunday. He wants to look over the Siskiyou Forks and Jones Creek setup. I haven't tried to work on him on the mill, but believe there is a possibility that he might be interested. But this must be handled with silk gloves. You understand, I am not committing myself one way or another, just trying to work up a deal.

With kind personal regards, I am

Yours truly,

SAM J. WILSON,

/s/ SAM J. WILSON.

SJW/ej

DEFENDANT'S EXHIBIT P-22

[Letterhead]

Wilson Timber Company
Eureka, California

Aug. 24th, 1945.

Mr. S. A. Agnew,
c/o Agnew Lumber Company,
Centralia, Washington.

Dear Mr. Agnew:

Here is one I want you to read very carefully: I have investigated the Government flat bottom barges, equipped with loading cranes, which will be sold in the comparatively near future at a fraction their cost. 25% down and balance over a period of time. As I understand it, for the transportation of lumber, you can get a priority rating. This will also apply to tugs and landing barges.

I am now endeavoring to get all the facts and figures: Talked to a very competent barge man here

in Eureka who is also interested. I discussed the Crescent City and Brookings set-up with him, which he is very familiar with, and he suggested a three barge set-up. Says the large type barge which is 187 feet long with a 45 foot beam will carry from eight hundred thousand to a million feet of lumber. His idea on the three barges would be, one loading, one unloading, and one in transit. This would keep a sea-going tug in continuous operation which would enable you to make a round trip to Los Angeles every ten days, and to San Francisco every five days. Of course this arrangement would be all right, if you had sufficient tonnage. But so far as Brookings and Crescent City are concerned, think one tug and a barge would do the work. The tug and barge crew would number seven men against thirty-two on a lumber schooner. From what I have learned from Anderson and Middleton of Aberdeen, Washington, and the local situation here, believe this is a very practical and cheap transportation.

Now, here is another way of working: Buy a small barge that will carry about 350 to 400 thousand feet of lumber, figuring loading and unloading time, would require about a week for a round trip. Hire a sea-going tug to bring the empty back and the load down. And as I understand, will cost about \$15.00 per hour. In this way, you would only pay for the tug two days a week, as they would make the round trip from Eureka in about 10 to 15 hours, depending on the wind. Of course, I'm not a tug man, but from what information I have gathered, believe I

would be safe in stating that the cost of transporting the lumber to Eureka would not exceed \$2.00 per thousand. And in this, you could allow for a considerable investment in the barge.

The rail loading facilities are such that you could load from the barge onto the car. I believe, Mr. Agnew, if we could acquire the Bankus holdings with what you already have, on this kind of a set-up you could buy the lumber at the mills less the trucking charges and commission, and sell in San Francisco and Los Angeles at the Portland rate, besides getting a good price for your stumpage [2 words illegible] beat running a sawmill all to hell. This is just another one of my ideas, but it is worth considering.

With kind personal regards, I am

Yours very truly,

SAM J. WILSON,

/s/ SAM J. WILSON.

P.S. Just received deeds and assignments on the Clutter timber in Sanders Creek, which have been in the making several months.

SJW/ej

DEFENDANT'S EXHIBIT P-23

[Letterhead]

Wilson Timber Company
Eureka, California

Aug. 24th, 1945.

Mr. S. A. Agnew,
c/o Agnew Lumber Company,
Centralia, Washington.

Dear Mr. Agnew:

In reference to my talks with Bankus, I find there is going to be considerable building in the valley and in and around Brookings as the result of the lily-bulb business. The class of people that are coming in, are not just dreamers, but a pretty substantial lot with money. And it is my firm belief there will be several hundred good homes built between Crescent City and Brookings as soon as the material is available. You know this whole thing up there is really a Bankus dream. I told him I thought one of his best moves would be to get a sawmill, and if the right kind of terms were made on his timber, I might be able to induce someone to come in. To this he seemed to be quite agreeable. This is where we left off. I was to see him the end of this week, but as there are so many other matters, I will put it off until later.

Now my proposition would be: If a plant were built reasonably soon in Brookings, I could make a very satisfactory deal on the timber, also get the use of the mill pond and sufficient ground to build

the plant on, with all the dock facilities. I believe, Mr. Agnew, I could get a mill to come in there on a stumpage basis, on approximately the same basis that Peters is considering in Crescent City.

I have written you in a previous letter regarding the possibilities of getting a barge. However, with the local demand there will be for lumber, and the present rate for trucking to Arcata, I think it is a damn good plan to build a mill. Of course with water transportation it would be a honey.

With kind personal regards, I am

Yours very truly,

SAM J. WILSON,

/s/ SAM J. WILSON.

SJW/ej

DEFENDANT'S EXHIBIT P-24

Western Union

[Telegram]

Centralia, Wash.

December 22, 1945.

Sam J. Wilson,

Lauff Hotel,

Crescent City, California.

Left Unexpectedly. Will Return Thursday. Stop.
Investigated Farm Pond. Think Impractical and
Would Not Want at Any Price.

S. A. AGNEW.

DEFENDANT'S EXHIBIT P-25

[Letterhead]

Wilson Timber Company
Crescent City, California

February 11, 1946.

S. A. Agnew,
Care Agnew Lumber Company,
Centralia, Washington.

Dear Mr. Agnew:

I just received word that the accountant will be here Wednesday or Thursday, and will send you a complete statement on the timber purchases for last year, which you will receive not later than the 20th.

Yours truly,

/s/ SAM J. WILSON.

SJW/M

P.S. Enclosed are copies of Weekly Trinity Journal, and the Humbolt Times, covering timber lands for sale.

Encl—2

DEFENDANT'S EXHIBIT P-26

[Letterhead]

Wilson Timber Company
Crescent City, California

June 19, 1946.

Mr. S. A. Agnew,
Centralia, Washington.

Dear Mr. Agnew:

Mr. A. K. Wilson communicated with me yesterday, pertaining to the proposition I made you by letter. This deal can still be made.

So far I have been unable to get a definite price on the 160 in Klamath controlled by the Quinn family, but will do so in a day or so. I do know if you get it you won't be able to mill over one-half the timber with your present set-up. I think you should look at the timber in section 8 before you definitely turn it down. I don't see how you can turn this deal down and still consider you are using good business judgment—but it's your mill. I feel I was responsible, Sam, for your buying this mill, and now that you have an opportunity for God's sake get rid of it before you lose your tail.

I am also in receipt of a letter from the Benson Lumber Company in San Diego, stating that they will increase their contract to thirty-five million, with two years to deliver. These are two damn good deals, and if we are going to do anything let's get busy.

Defendant's Exhibit P-26—(Continued)

I have stuck along with you for three years and done a damn good job, if I do say so myself—bought your timber for nothing and you could sell out today for a couple of million profit. Now Sam, if you are going to give me a chance to work out our original deal, I am willing to go along, otherwise I'm not much of a hand to stick along on a losing proposition that should be making money.

You have operated the mill down here for two years with an original investment of seventy-five thousand dollars—and today am satisfied you have two hundred thousand invested. There is not a mill in California that isn't making money and has not been for the past two years, with most of them operating on a shoe string. Now, who is to blame? Not you. But Sam, you certainly pick some Lulus to run your business and you are sooner or later going to find out it requires brains and not so much brawn to run a business. You know the old saying "When in Rome do as the Romans do" and you should know that by now, and if you don't you're going to find out, when you are in California you do as the Californians do if you want to make a success. I'm going to be frank and honest with you, as long as you continue to run your business from Centralia with the aid of glorified hook tenders, sawyers and edgemen as your executives, you never will make a success of it.

My cards as you know have always been on the table and these weird happenings down here you

Defendant's Exhibit P-26—(Continued)

have mentioned on various occasions;—for instance the hiring of fifteen men while I was intoxicated, reports emanating from the hotel, the big tract of timber I wasn't smart enough to buy up the Winchuck which does not exist, the telephone call regarding the Moore ranch and so on; are mere propaganda and Sam, petty jealousy has been the ruination of many a good organization. Some of your so called confidence talk too much and remember that those gypo loggers down here can teach some of the loggers from Centralia how to get cheap logs. That operation in the Siskiyou is superficial evidence of that. I have watched this performance for two years and have thought that sooner or later you might get your belly full, but have given up hope until you get it into your head that all the capable loggers and mill men do not all come from Centralia. However, I believe you have an exceptionally good man now operating your mill if he is left alone. Anyway Sam you are a damn good fellow, in fact a swell guy—but as I now understand you have appointed Mr. Sherwood your general superintendent and I am not working with a glorified hook-tender, his pants are too big for him and the quicker you put him back in kilts the better off you will be. Nobody knows anything about logging but himself, and everybody is a crook in his opinion.

Now that you know that I am a promoter and considered a damn good one, why not get together and make some money. You know money isn't new

Defendant's Exhibit P-26—(Continued)

to me, but I don't like to be under suspicion as I feel the case is at the present time. You just figure it this way. You trusted me and I trusted you and I am still to be trusted. I made some very good buys in timber that you never would have known about and now that the job is pretty well along it seems that the propaganda concerning my private life is getting too much for you. When I went into this deal with you I didn't know that I was dealing with anyone else but you. In fact I didn't hear anything to the contrary until about a month ago when you mentioned it at Klamath. Now that all the work has been accomplished, the timber purchased at a low figure, the boys are all getting real smart. However it was your and my good judgment that made them smart. Under these conditions, I think it's time we get together and discuss our affairs, as I am not all pleased with the present set up. You are a fine fellow but evidently susceptible to unwarranted propaganda and I don't know why you should be. Your interests have certainly been taken care of to the best of my ability, and I don't think there is any room for criticism.

In final conclusion, I feel I have done a damn good job and it is now time I began to look out for my own interests. The timber was bought right and now is the time to sell. I have no hesitancy in predicting that within the next two to three years you can buy it back for one-half of what you can sell it for today.

Defendant's Exhibit P-26—(Continued)

I want you to give this a little thought. There is no hard feelings. I just feel the whole thing is too much of a one-man show. I feel I warrant your trust and with my ability and experience, I am going to be of value to somebody.

Hoping to see you soon.

With kind personal regards, I remain,

Yours truly,

/s/ SAM J. WILSON.

DEFENDANT'S EXHIBIT P-27

[Letterhead]

Wilson Timber Company
Crescent City, California

May 31, 1946.

Mr. S. A. Agnew,
c/o Agnew Lumber Company,
Centralia, Washington.

Dear Mr. Agnew:

I tried to reach you last night by phone. Had a long session with A. K. Wilson yesterday and I finally sold him on the following if he stays put, and I consider it an exceptionally good deal for you in as much as your timber is divorced from the mill.

1. He agrees to buy the mill for \$250,000.00.
2. He pays you thirteen thousand (\$13,000.00) dollars per month with no interest until paid for. At which time he takes possession.
3. He agrees to sell you 21 million feet of timber in Section 8, both redwood and fir, at \$5.00 per M with the understanding that you let a contract for the logging and he to take all redwood logs over 50 inches at the contract price, or, will trade you a like footage from his operation of redwood logs under 50 inches. Under this agreement you could saw both redwood and fir, and, the small redwood logs will float, and of course you understand the market is \$7.00 more for the lumber.
4. He's to lease the mill to you for \$1.00 per thousand. This would leave a balance of \$12.00 that you would receive, net, over and above OPA prices.
5. The deal is based on a minimum cut of one million feet per month for which you receive \$12,000.00 over and above OPA prices. Five thousand would be represented in timber and seven thousand in money. When he has paid the full amount of \$250,000.00 represented by timber and money your lease at \$1.00 per M is automatically cancelled, and he's the sole owner of the mill.
6. Wilson is to pay for half the road into the timber which is to be a contract job. This is entirely separate and is to be paid for in cash.

Here's the proposition, Mr. Agnew. It resolves itself into this. In less than two years time you will

receive \$250,000.00 for the plant if his payments are made promptly at the end of each thirty days. Payment is represented by \$5.00 per M in timber and \$7.00 per M in cash. If the payments are not made every thirty days, the contract is cancelled. Over and above the sale of the mill, you should have not more than \$19.00 logs at the mill for which A. K. Wilson will agree to pay you the ceiling price for the lumber, f.o.b. cars or at destination, at the Portland rate, 2% cash discount, no commission.

As I see it, on \$19.00 logs which includes the stumpage charge, you should make a profit at OPA prices of at least \$10.00 per M. Based on a cut of approximately 21 million feet, you should come out on the deal at the end of two years with at least \$450,000.00 for your plant; cutting his timber.

Sam, I consider this a dam good deal and if I were you I wouldn't lose any time negotiating while he's in the notion. Don't let the OPA bother you as this kind of a set up will stand up for the reason that you have a mill so situated that it's not profitable to haul logs fifty miles. Wilson owns the timber adjacent to the mill and can use the mill to cut the timber. Therefore, it would be very easy for you to show that it was only good business to sell your mill under these terms and conditions with good intent.

Wilson suggests that you and I meet with him in his office in Portland on Tuesday, June 4th, and, until you are able to get into the timber on section

8 and provide sufficient logs to operate, he will pay \$13.00 cash per M per month on the purchase price of the mill so long as you are milling your timber.

With kind personal regards, I am

Yours truly,

/s/ SAM J. WILSON.

SJW :leb

DEFENDANT'S EXHIBIT P-28

[Letterhead]

Wilson Timber Company
Eureka, California

July 3, 1946.

Mr. S. A. Agnew,
c/o Agnew Lumber Company,
Centralia, Washington.

Dear Mr. Agnew:

I am just in receipt of your letter and note that you will freeze and close the book on everything north of the Klamath-Smith River divide except where Wells is logging if we do not get the Powrie timber. I wired you covering the situation this morning before receiving your letter, so unless we can deal with Kelly on a satisfactory basis on the property adjoining the Reynolds' tract, I guess the freeze is on.

I have been trying for months to discourage you with that Klamath operation, but it seems that you can't be discouraged. So, Sam, I guess you will just keep on bucking the tiger. You have had everything happen to you down there except a fire, so unless you are fortunate enough to have one before next spring, the high water will probably finish the job.

A. K. Wilson is still willing to deal for the Klamath mill, and you can take that money and build a mill here in Crescent City adjacent to your timber and make more profit out of it accidentally than you can with the Klamath operation on purpose.

Well, Sam, you're the boss; it's your mill and it's your money, and I wish you a lot of good luck.

With kind personal regards, I am

Very truly yours,

/s/ SAM J. WILSON.

SJW:an

DEFENDANT'S EXHIBIT P-29

[Letterhead]

Wilson Timber Company
Eureka, California

July 12, 1946.

Mr. S. A. Agnew,
c/o Agnew Lumber Company,
Centralia, Washington.

Dear Mr. Agnew:

I am now in the process of closing a deal with A. K. Wilson for the Andreatta tract located on Terwall Creek two miles from Klamath, approximately 86,000,000 feet. This is the reason for not writing sooner.

My deal calls for \$4.00 on a stumpage basis over a period of three years. If A. K. Wilson gets the lumber, the stumpage price will be \$2.00, OPA prices if revived or top market prices, all things being equal.

You and I have done business together for quite some time, and I think it's a good idea that we get together and discuss our affairs. There's no use, Sam, in being too stubborn about things. I will be very glad to work with you on any kind of a reasonable basis.

Hoping to see you soon, I am

Very truly yours,

/s/ SAM J. WILSON.

SJW :an

DEFENDANT'S EXHIBIT P-30

Crescent City, California

July 28, 1946.

Mr. S. A. Agnew,
Agnew Lumber Company,
Centralia, Washington.

Dear Sam:

I was informed today you would be in Klamath tomorrow and I think it is now high time we got together. My cards are always on the table and it seems as though some one has been pushing yours around. All my business Sam was done with you direct, I don't recognize anybody else. I am building a dam three miles north of Crescent City on the Brookings highway that will hold eight million feet of logs. It might be well for you to drive by and I don't think it will cost any more than that mis-fit that your Jack is building in Klamath.

I hope, Sam, that you start to do a little thinking before it is too late. Come down sometime the day after Jack arrives and see how drunk he can get, don't be foolish all your life.

As I have written you before, you have too much brawn and not enough brains in your organization—too many yes, yes men, and for Christ's sake why don't you get smart.

Yours truly,

SAM J. WILSON.

DEFENDANT'S EXHIBIT P-31

(Copy of original letter.)

Hotel Lauff
Crescent City, California

November 30, 1946.

Mr. Samuel A. Agnew,
Agnew Lumber Company,
Centralia, Washington.

Dear Mr. Agnew:

It would be much easier to work up statements if I have the records pertaining to each individual purchase that you have in your office. Therefore, when you come down this next time, I wish you would bring them with you, and I can check up the matter of taxes.

I wish you would arrange to spend a few hours with me, and get the whole matter straightened out.

I am enclosing tax statement which should be paid before December 5th, at which time they will become delinquent. These should be paid at once.

You have a map pertaining to the Jones Creek holdings in Del Norte County, and think it would be advisable to check the tax statement against it.

If you are going to abandon the Westbrook tract, I would be glad to notify the Assessor, Frank Burtchell.

Now, in reference to the Humboldt holdings, I think there must be something wrong regarding the Humboldt holdings which I recently purchased where the taxes have raised about 400%. I am holding these out until I hear from the Assessor. I think it would be well to let these go delinquent. It doesn't seem possible that they can raise these taxes from \$8.00 a quarter to approximately \$45.00 without some explanation. However, the taxes on the Kepner tract should be paid.

Hoping to see you soon, I am

Your very truly,

/s/ SAM J. WILSON.

SJW:l

DEFENDANT'S EXHIBIT P-32

California Veneer Company
Klamath, Del Norte County
California

December 11, 1946.

Mr. Sam Wilson,
Patrick's Creek Tavern,
Crescent City, California.

Dear Sam:

We are enclosing herewith tax bill covering the piece of timber we sold Agnew and we would like to have you take care of this matter. We would

probably be liable for one month of the total tax bill but it is so small that we presume it would be best for you to pay the whole thing.

If you are in need of more cores contact us and we will take care of you.

We left your silver to be redone but when I left Los Angeles it was not ready.

Very truly yours,

CALIFORNIA VENEER
COMPANY,

By /s/ [Indistinguishable].

EWB:dn

Enclosure

DEFENDANT'S EXHIBIT P-33

Wilson Timber Company
Crescent City, California

March 6, 1947.

S. A. Agnew,
c/o Agnew Timber Company,
Centralia, Washington.

Dear Mr. Agnew:

Sorry I didn't see you when you were down last as I would like to straighten out our accounts.

There is a timber deal down in Eureka that you might be interested in. As you know I have always given you first call on any timber deals that come to my attention. I will give it to you in brief.

There is 150 million feet in the Willow Creek District owned by a Mr. Parker and Gleason and they need \$80,000 for which they will give a mortgage for \$120,000. Better yet, they will put the deed in escrow for a period of six months with the understanding that they will pay \$120,000. If not paid promptly you would be the owner of the timber.

They have a contract which I read with the plywood company in Eureka which is about ready to start operations at \$4.00 per M. I went through the plant, maybe you have to, and it is a very modern, efficient plant and cost over a million dollars, but it is purely a promotion and I doubt that the present management will be successful in its operation, and in my opinion there is a good chance that you would own the timber referred to at \$80,000.

The timber is located adjoining the Hoopa reservation 35 miles from Eureka, and is a very good stand. It is adjacent to the 160 that I mentioned to you when I last saw you that I was offered \$2.00 per M. At present day prices I consider the stand worth at least \$300,000 to \$350,000. They could sell it around that figure, but they are inclined to believe they will make more money by selling it on a stumpage basis. This is the reason they are willing to pay the premium for the money.

I am mailing you under separate cover some letters that I received from the tax collector of Humboldt County that are no doubt receipts for taxes. Also a letter from E. O. Wright which was opened by mistake.

Very truly yours,

/s/ SAM J. WILSON,

Patrick's Creek Tavern,
Crescent City, California.

P.S.: If you are interested, wire me as there are several others nibbling.

DEFENDANT'S EXHIBIT P-34

Wilson Timber Company
Crescent City, California

April 5, 1947.

S. A. Agnew,
Agnew Lumber Company,
Centralia, Washington.

Dear Mr. Agnew:

We are unable to arrive at any accurate figure on anything until we have a statement of the amount of money involved.

Your statement to me the other day as to the amount does not in any way compare with mine.

Mr. Isaacs would like to have the exact amount of timberlands acquired through me and the price, exclusive of the Klamath mill.

My dealings were all with you and therefore the settlement should be made with you and when we have a statement on timberlands purchased, price, etc. I am sure we can come to some understanding as to final settlement.

Very truly yours,

/s/ SAM J. WILSON,

Patrick's Creek Tavern,
Crescent City, California.

SJW/h

DEFENDANT'S EXHIBIT P-35

(Copy)

April 10, 1947.

Mr. Sam J. Wilson,
Patrick's Creek Tavern,
Crescent City, California.

Dear Mr. Wilson:

Not long ago our office received information that you had paid the taxes on the Klamath Mill property. I did not think much about it but last Friday while at the office in Klamath, Evelyn said that she had been paying the taxes on the mill property but when she went to pay them for 1946, they told her that they had been paid and, of course, she wanted

the receipts and as I knew nothing further about it, of course, she wanted to know why.

There are several pieces of timber which you told me you had the deeds for and I wish you would forward them to this office or have them so I can get them the next time we meet. We are making a check of all properties and if you will do this it will be a great help and save a lot of trouble.

I called from Klamath last Friday but was unable to reach you.

Hoping to hear from you and see you soon.

Yours very truly,

DEFENDANT'S EXHIBIT P-36

(Copy)

Crescent City, California

April 16, 1947.

S. A. Agnew,
Agnew Lumber Company,
Centralia, Washington.

Dear Sam:

I am just in receipt of your letter under date of April 10th and note what you say about the taxes on the Klamath Mill plant for 1946. I no doubt paid these taxes at your request, as I did a good many

Defendant's Exhibit P-36—(Continued)

other, which from the tone of our conversation the last time I saw you, your office has no record of.

I wrote you on June 3rd and June 19th, 1946, covering the situation so far as you and I are concerned, and to date nothing had been done about it. I wrote you on April 5th that we were unable to arrive at anything until we have a statement on the amount of money involved according to your figures, and I am waiting for this statement.

You might as well understand, Sam, that I have been pushed around as long as I am going to be. We can settle peaceable or any way you want to have it, but it is going to be settled. It seems strange to me that on or about March 1, 1946, you made it known to me that you were handling other people's money, both estates and minors. Since that date you have maintained that you are only acting as agent for estates and minors. Now my dealings are with you, and all the properties purchased are in your name and so far as I know still are, and it is you I am looking to for a settlement.

The timber I purchased for approximately \$350,000 is now worth and can be sold for more than five times that amount which you should know, Sam, any court of equity will recognize if that is the way you want it, and it is time some kind of a settlement is arrived at.

I want to give you one example of your method of doing business. On March 1, 1946, you wrote me

Defendant's Exhibit P-36—(Continued)

condemning me in these words, "I can't imagine you, as good as you are, paying out real money for a proposition in California you never have seen," stating personally that you did not have much confidence in the ability of Mr. Kane of Ventura, California, whom you are now doing business with. And when I tried to make a deal with him you wired me as follows: "Deal has been close on the output of the Klamath Mill."

In other words, Sam, since March 1st you have been very evasive and not too much to my liking and since receiving your letter of July 2, 1946, stating that if you lose the Powrie Timber deal we will freeze and close the book on everything north of the Klamath, I have been waiting for you to make up your mind what you want to do. In the meantime, I have put on the same freeze.

Now, Sam, as I stated before my business dealings are with you and all the timber is in your name, unless it has been recently changed. This timber was purchased at an average price of about 32c per M. and can be sold on the present market at many times that price. So your "people," as you refer to them, must understand that the man who made it possible to purchase this timber at the ridiculously low price referred to, is going to be paid as per our agreement. In this I take no responsibility for the operation of the Klamath Mill. You and Jack Sherwood can have that.

Defendant's Exhibit P-36—(Continued)

I am perfectly willing to sit down across the table and make a fair and equitable settlement, and you keep the timber or I want a 12 months' option at the going market price, locations taken into consideration, and you well know I am capable of selling the timber. There is no use bickering around, we might just as well come to an understanding, peaceable or otherwise, and get it off our chests.

Now, in final conclusion, here are a few things to think about: You will no doubt recall the day of the county sale at Gold Beach, how Mr. Nettleton was eliminated, and you came down prepared to pay twice what the property was bought for. Maybe your people don't know about that. These are just little things that, as I might say, it takes brains to figure out.

Oh, yes, and don't forget the tax reduction on the property in Del Norte and more than that you know that if it had not been for the months of hard work put in Curry County we never would have gotten the tax lands for practically nothing.

Since my associations with you we have sold, to my knowledge, 40 acres of timber for \$6,000 in Pistol River and you got the money. This was sold out of a tract of 1,120 acres that we paid in all \$11,000 for. Don't forget that I took care of all overhead expenses, including office at Eureka, paid Bill Kay, office girl, rent, telephone, etc. Purchased Trinity County tax lands at \$4.00 per acre, now

Defendant's Exhibit P-36—(Continued)

can be sold for \$29.00 to \$40.00 per acre. Purchased Del Norte County and Humboldt County timber in California, and Curry County timber in Oregon. Helped you with the mill at Klamath that I was not interested in. Got you out of a mess at Port Orford. Took care of the taxes, No Charge.

Now, Sam, to show you that you are not right, you would not have come down and asked me to mail all the records to you on the supposition that your accountant, Mr. Stone, wanted to go over them with the understanding that you would return same when you did not intend to return them. You are not doing business with a damn fool, very trusting, but not simple. We went into this to make money buying and selling timber, but we don't seem to be selling any, through no fault of mine.

As I have explained to you in my previous letters, my private life is my own and it is so strange that you and your people didn't find out that my private life was not beyond reproach until after, through my efforts, you were in a position to cash in for 1½ to 2 million dollars, over your investment, which I was responsible for. I would say, Sam, you were damn lucky you met me for your own benefit as well as your peoples, estates, etc., because you well know that if it had not been for me you would not have the timber.

So you will understand, Sam, why I feel that 31½ years of my best effort is worth money. All you have to do is just look up my past earning power which you will find when I worked was well over

Defendant's Exhibit P-36—(Continued)

\$50,000 per annum and I surely worked for 3½ years on this deal.

Now all I want is a fair and equitable settlement and let's get down and figure it out. I have been fair with you right straight through and you know it, and I expect the same treatment in return. I will be very glad at any time to meet with you on any fair and equitable basis of settlement or my lawyer will be very glad to meet with your lawyer on the same basis.

Very truly yours,

.....,

SAM J. WILSON,

Patrick's Creek Tavern,

Crescent City, California.

SJW/h

DEFENDANT'S EXHIBIT P-37

(Important)

Crescent City, California

June 21, 1947.

Mr. S. A. Agnew,
Agnew Lumber Company,
Centralia, Washington.

Dear Mr. Agnew:

I received your letter stating that you would be down on Tuesday and return on Friday.

I called at the Mill on Thursday, and found that you had departed Thursday morning.

Now, Sam, I wrote you a letter under date of April 16th, addressing it your Centralia, Washington, office, and sent a copy of it to the Mill at Klamath. I noted that you state you have not received a letter from me since March. It seems mighty strange to me; one letter might have been lost, but surely both of them should not have been lost. However, in case they were, I am enclosing a copy of the letter in question.

There is no reason, Sam, why you and I should have any differences, and I think the best thing for us to do is to sit down and talk it over, and the sooner the better.

Your son informed me that you were contemplating rebuilding the Mill at Klamath. This I cannot understand, with the harbor improvement now under way in Crescent City. Morrison-Knudsen have purchased the Portland Tug and Barge, and will run regular barge service from Crescent City for California points and off-shore loading.

With your timber located where it is, it looks to me that you will add from \$6.00 to \$7.00 per M. to your cost in hauling the logs to Klamath and then bringing the lumber to Crescent City. However, that is entirely up to you, but I wanted to let you know there is really going to be a barge line out of Crescent City, and more than that, that I have a very

desirable mill site, as you know, ideally located for your timber.

With kindest personal regards, I remain,

Sincerely,

/s/ SAM J. WILSON.

SJW :l

(Copy)

DEFENDANT'S EXHIBIT P-38

July 9, 1947.

Mr. Sam J. Wilson,
Patrick's Creek Inn,
Crescent City, Calif.

Dear Mr. Wilson:

On my return I found your note with letter enclosed, dated April 16, and I cannot see the object of this letter, as you well know after hounding you for two years for a statement and continuous promises, the last being that you would definitely have your auditor come to Centralia or advise where we could meet, pursuant to furnishing a statement by you; and I cannot believe that you, in your right mind, wrote this letter dated April 16. Frankly, I think it was sponsored by some one who knows nothing about the case or was trying to give a false

impression to someone—I don't know to whom. And I must repeat again that our people are becoming more insistent that you furnish a statement as to the moneys which were given to you for a specific purpose, and certainly they are entitled to this.

Yours very truly,

.....

(Copy)

DEFENDANT'S EXHIBIT P-39

December 17, 1947.

Mr. Sam J. Wilson,
Crescent City, California.

Dear Sam:

I received your letter of December 3 but have been away, hence the delay.

It seems strange, Sam, that after trying to get a statement from you for over two years and the many promises that you have made to furnish same, stating that your auditor would have it ready at such and such a time and you would arrange to come to Centralia or meet me in Crescent City or get the statement in some manner many times, now you seem to have a new angle of right about face and ask when we are going to furnish you a statement. What we want, Sam, is a statement from you

showing just what you have done with all the money.

With best wishes and compliments of the season,
I remain,

Yours very truly,

.....

DEFENDANT'S EXHIBIT P-40

December 3, 1947.

Mr. S. A. Agnew,
c/o Agnew Lumber Co.,
Centralia, Washington.

Dear Sam:

Now that you have become a timber baron in this section, I was just wondering how you feel, but don't overlook the fact that you neglected to settle with the guy that made you the timber baron. I was really surprised that you had the nerve to sue me for you know there was no just cause. Now that you have demonstrated beyond any question of doubt that you have petty larceny in your soul, I feel it is time for me to take action, which I have done.

You know when I first met you we seemed to get along all right until the timber became valuable, which I told you it would, and now you refer to

your people. The only person that I have had any dealings with is yourself, and you know it. When you purchased the timber in Curry County, you paid 20 per cent down and the balance later. In other words, Sam, you couldn't have done this without me, but you neglected to settle with me.

I am perfectly willing to settle any differences we have on an equitable basis due to taxation. And I think the smart thing for you to do is to get over your stubborn ideas and come down to earth and settle this matter before it goes any further. I don't want to hurt you, but I am not going to be made a monkey of. I want a settlement, and I want it before the first of January. Otherwise, we are going to lock horns in the courts, and you know you are on the wrong side of the fence.

You know how well I bought this property and I can sell it to the same advantage. So far as the Benson Lumber Company is concerned I discovered them and can do a much better job with them than you. I am perfectly willing to sit down and discuss ways and means of resolving this situation with you personally. I am also willing to bury the hatchet and carry the entire matter to a successful conclusion along the original lines, which you know I am capable of doing.

I am sending a copy of this letter to **Klamath** as well as **Centralia**, so there will be no excuses, as in the past, for not receiving the same.

Yours truly,

/s/ SAM J. WILSON.

DEFENDANT'S EXHIBIT P-41

Wilson Timber Company
Manchel Building
Grants Pass, Oregon

February 16, 1950.

Mr. C. D. Cunningham,
Attorney at Law,
Centralia, Washington.

Dear Mr. Cunningham:

As per our conversation in Centralia, I am enclosing certified copies of deeds of record in Curry County with the exception of the Bankus tract, which I will forward to you tomorrow.

I have the deeds on all the California property prepared by Mr. Quinn.

Wish you would check against the complaint and see if same is covered in Curry County. I have prepared Quitclaim deeds from these certified copies enclosed. If same are satisfactory I can see no reason why we can't close the deal when the Bargain and Sales deed you mentioned is forwarded to Mr. Quinn.

As I mentioned to you, I am anxious to go South for a further rest, and will stop at Patrick's Creek Lodge for a few days. Therefore, wish you would drop me a line in care of Patrick's Creek Lodge,

Crescent City, California, if you are satisfied with the deeds as set forth.

Yours truly,

/s/ SAM J. WILSON.

SJW :j

5 Encl.

P.S.: In the Quitclaim deeds I have prepared I have omitted the timberland in Township 36 South, Range 14 West, W.M., which is to be deeded to me.

Received in evidence October 25, 1955.

DEFENDANT'S EXHIBIT Q

Contract to Purchase Tax Title Property

This Contract, made and entered into this 1st day of September, 1943, between Curry County, a municipal subdivision of the State of Oregon, hereinafter referred to as the Seller, and S. A. Agnew of Centralia, Washington, hereinafter referred to as the Purchaser,

Witnesseth:

The Seller hereby agrees to sell and the Purchaser hereby agrees to purchase from the Seller the following-described real property located in the County of Curry, State of Oregon, to wit:

Defendant's Exhibit Q—(Continued)

Lot 10, SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 1.

E $\frac{1}{2}$ of the SE $\frac{1}{4}$ and an undivided $\frac{1}{4}$ interest in the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 3.

NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 10.

NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 11.

N $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 13.

NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ and N $\frac{1}{2}$ of the SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 14.

SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 27.

NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 34.

NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the S $\frac{1}{2}$ of Section 36, all in Township 36 South, Range 14 West.

Lots 1, 2, S $\frac{1}{2}$ of the NE $\frac{1}{4}$ of Section 3.

SW $\frac{1}{4}$ and SE $\frac{1}{4}$ of Section 3.

SE $\frac{1}{4}$ of Section 7.

E $\frac{1}{2}$ of the NE $\frac{1}{4}$ and the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ and the E $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 9.

W $\frac{1}{2}$ of the NE $\frac{1}{4}$ and the NW $\frac{1}{4}$ and the W $\frac{1}{2}$ of the SW $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ and the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 10.

SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 17.

SE $\frac{1}{4}$ of the NE $\frac{1}{4}$, Lots 2 and 3 of Section 13.

Lot 2, E $\frac{1}{2}$ of the NW $\frac{1}{4}$, except 1.28 Ac. Rd. in Section 19.

NW $\frac{1}{4}$ of Section 26.

W $\frac{1}{2}$ of the SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 29.

Lot 2, and the W $\frac{1}{2}$ of the SE $\frac{1}{4}$ and the E $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 30.

Defendant's Exhibit Q—(Continued)

Lots 3 and 4, and the $E\frac{1}{2}$ of the $SW\frac{1}{4}$ and the $W\frac{1}{2}$ of the $NE\frac{1}{4}$ of Section 31.

$NW\frac{1}{4}$ of the $NE\frac{1}{4}$ and the $NE\frac{1}{4}$ of the $NW\frac{1}{4}$ of Section 32.

All in Section 36.

All in Township 38 South, Range 13 West, W.M.

Lots 1 and 2, $SE\frac{1}{4}$ of the $NE\frac{1}{4}$ and the $SW\frac{1}{4}$ of the $NW\frac{1}{4}$ and Lots 3 and 4 in Section 1.

Lot 1 and the $SE\frac{1}{4}$ of the $NE\frac{1}{4}$ and the $SE\frac{1}{4}$ of the $SE\frac{1}{4}$ of Section 2.

Lots 1 and 2 and the $SE\frac{1}{4}$ of the $NE\frac{1}{4}$ and except Cedar Tbr. in Section 3.

Lots 3 and 4, $S\frac{1}{2}$ of the $NW\frac{1}{4}$ of Section 3. $W\frac{1}{2}$ of the $SW\frac{1}{4}$ and the $N\frac{1}{2}$ of the $SE\frac{1}{4}$ and the $SE\frac{1}{4}$ of the $SE\frac{1}{4}$ of Section 3.

$E\frac{1}{2}$ of the $NE\frac{1}{4}$ of Section 8.

$S\frac{1}{2}$ of the $NE\frac{1}{4}$ and the $NW\frac{1}{4}$ and the $SW\frac{1}{4}$ and the $SE\frac{1}{4}$ of Section 9.

$SE\frac{1}{4}$ of Section 10.

$NE\frac{1}{4}$ of the $NE\frac{1}{4}$ and the $S\frac{1}{2}$ of the $NE\frac{1}{4}$ and the $NW\frac{1}{4}$ of the $SW\frac{1}{4}$ and the $NW\frac{1}{4}$ of the $SE\frac{1}{4}$ and the $E\frac{1}{2}$ of the $SE\frac{1}{4}$ of Section 11.

$NE\frac{1}{4}$ and the $SE\frac{1}{4}$ of the $NW\frac{1}{4}$ and the $NE\frac{1}{4}$ of the $SW\frac{1}{4}$ and the $NE\frac{1}{4}$ of the $SE\frac{1}{4}$ of Section 12.

$SE\frac{1}{4}$ of the $NE\frac{1}{4}$ and the $NW\frac{1}{4}$ and the $SE\frac{1}{4}$ of Section 13.

$NE\frac{1}{4}$ and the $E\frac{1}{2}$ of the $NW\frac{1}{4}$ of Section 14.

$NE\frac{1}{4}$ of the $NE\frac{1}{4}$ of Section 15.

Defendant's Exhibit Q—(Continued)

NE $\frac{1}{4}$ and the NW $\frac{1}{4}$ and the N $\frac{1}{2}$ of the S $\frac{1}{2}$ of Section 16.

E $\frac{1}{2}$ of the NE $\frac{1}{4}$ and the N $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 17.

SE $\frac{1}{4}$ of Section 22.

S $\frac{1}{2}$ of the NE $\frac{1}{4}$ and the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and Lot 7, and the E $\frac{1}{2}$ of the SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ of Section 23.

NE $\frac{1}{4}$ of Section 24.

An undivided $\frac{3}{8}$ interest in N $\frac{1}{2}$ of the NE $\frac{1}{4}$ and the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ in Section 25.

S $\frac{1}{2}$ of the NE $\frac{1}{4}$ except 3.14 acres des. Vol. 23, pages 444-457, Deeds, in Section 25.

N $\frac{1}{2}$ of the NW $\frac{1}{4}$ and the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ except 9.21 A., Vol 23, pages 444-457, Deeds, in Section 25.

SW $\frac{1}{4}$ except 104.53 Ac., Vol. 23, Pages 444-457, Deeds, in Section 25.

SE $\frac{1}{4}$ except 0.65 Ac., Vol. 23, pages 444 to 457, Deeds, in Section 25.

NE $\frac{1}{4}$ and the N $\frac{1}{2}$ of the NW $\frac{1}{4}$ and the E $\frac{1}{2}$ of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ of Section 26.

An undivided $\frac{1}{2}$ interest in W $\frac{1}{2}$ of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 26.

SE $\frac{1}{4}$ except 19.0 Ac., Vol. 23, pages 444 to 457, Deeds, in Section 26.

NE $\frac{1}{4}$ and the NW $\frac{1}{4}$ and the N $\frac{1}{2}$ of the SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ and the N $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 27.

Defendant's Exhibit Q—(Continued)

E $\frac{1}{2}$ of the NE $\frac{1}{4}$ and the W $\frac{1}{2}$ of the SW $\frac{1}{4}$
and the E $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 34.

NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ of Section 35.

NE $\frac{1}{4}$ and the NW $\frac{1}{4}$ and the N $\frac{1}{2}$ of the SW $\frac{1}{4}$
and the N $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 36, all
in Township 38 South, Range 14 West, W.M.,
Curry County, Oregon.

Lots 7, 8, 9, 10 and 11 in Section 1.

E $\frac{1}{2}$ of the SW $\frac{1}{4}$ and the N $\frac{1}{2}$ of the SE $\frac{1}{4}$ and
the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 1.

Lots 9, 10, SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ of Section 3.

SW $\frac{1}{4}$ and the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ and the S $\frac{1}{2}$
of the SE $\frac{1}{4}$ of Section 5.

Lots 1, 8, 7, 10, 11, and the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$
of Section 6.

NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$
and the S $\frac{1}{2}$ of the NE $\frac{1}{4}$ and the E $\frac{1}{2}$ of the
SE $\frac{1}{4}$ of Section 7.

NE $\frac{1}{4}$ and the N $\frac{1}{2}$ of the NW $\frac{1}{4}$ and the SE $\frac{1}{4}$
of the NW $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$
and the S $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 8.

SE $\frac{1}{4}$ of Section 8.

NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the W $\frac{1}{2}$ of the NE $\frac{1}{4}$
and the NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ and the NW $\frac{1}{4}$
of the SE $\frac{1}{4}$ of Section 9.

SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$
and the S $\frac{1}{2}$ of the SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ of
Section 11.

W $\frac{1}{2}$ of the NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$
and the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the W $\frac{1}{2}$
of the SW $\frac{1}{4}$ of Section 12.

Defendant's Exhibit Q—(Continued)

NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ and the S $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 12.

An undivided $\frac{1}{2}$ interest in SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the E $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 12.

NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ and W $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 13.

SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 14.

SW $\frac{1}{4}$ and Lots 6 and 7 and the W $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 16.

Lot 4, SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 17.

Lots 1 and 2 and the SE $\frac{1}{4}$ of Section 18.

W $\frac{1}{2}$ of the NE $\frac{1}{4}$ and the E $\frac{1}{2}$ of the NW $\frac{1}{4}$ and the E $\frac{1}{2}$ of the SW $\frac{1}{4}$ and the W $\frac{1}{2}$ of the SE $\frac{1}{4}$ and Lots 1, 3 and 4 of Section 19.

N $\frac{1}{2}$ of the NE $\frac{1}{4}$ and the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ and the S $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 20.

W $\frac{1}{2}$ of the NE $\frac{1}{4}$ and Lot 2 and the W $\frac{1}{2}$ of the W $\frac{1}{2}$ and Lot 3 of Section 21.

SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 22.

E $\frac{1}{2}$ of the E $\frac{1}{2}$ and the N $\frac{1}{2}$ of the NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 23.

E $\frac{1}{2}$ of the E $\frac{1}{2}$ and the W $\frac{1}{2}$ of the NW $\frac{1}{4}$ ex. 2.38 ac. rd.; SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ and the E $\frac{1}{2}$ of the SW $\frac{1}{4}$ ex. 2.21 ac. road, in Section 24.

NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ and the N $\frac{1}{2}$ of the SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 26.

Defendant's Exhibit Q—(Continued)

W $\frac{1}{2}$ of the NW $\frac{1}{4}$ of Section 27.

Lot 2 and the N $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 28.

NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$
and the S $\frac{1}{2}$ of the NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ and
SE $\frac{1}{4}$ of Section 29.

SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the N $\frac{1}{2}$ of the SE $\frac{1}{4}$
and the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ and the N $\frac{1}{2}$ of
the NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and
Lot 1 of Section 30.

The SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the W $\frac{1}{2}$ of the
SE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec-
tion 32.

NW $\frac{1}{4}$ of Section 34.

W $\frac{1}{2}$ of the SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$
and the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ and the E $\frac{1}{2}$ of
the SE $\frac{1}{4}$ of Section 35, all in Township 39
South, Range 13 West, W.M., Curry County,
Oregon.

Lots 3 and 4 and the S $\frac{1}{2}$ of the SW $\frac{1}{4}$ and
the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 1.

Lots 1, 2 and the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ and Lots
3, 4 and the S $\frac{1}{2}$ of the NW $\frac{1}{4}$ and the NE $\frac{1}{4}$
of the SW $\frac{1}{4}$ and the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of
Section 2.

Lot 1 and the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ except 7.14
Ac. Highway in Section 4.

The SE $\frac{1}{4}$ of Section 9.

The NE $\frac{1}{4}$ and the S $\frac{1}{2}$ of the NW $\frac{1}{4}$ and the
SW $\frac{1}{4}$ except 11.5 Ac. Highway in Sec-
tion 11.

The SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the NW $\frac{1}{4}$ of the

Defendant's Exhibit Q—(Continued)

NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ and the E $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 12.

W $\frac{1}{2}$ of the NE $\frac{1}{4}$ and the N $\frac{1}{2}$ of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 13.

The N $\frac{1}{2}$ of the NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ ex. 5.15 Ac. Highway, W $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 14, all in Section 15.

NE $\frac{1}{4}$ and the E $\frac{1}{2}$ of the NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ of Section 22.

The SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the W $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 23.

16.08 Ac. in NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ des. Vol. 23, page 444, Deed; E $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 24.

The NE $\frac{1}{4}$ and the W $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 25.

The NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the W $\frac{1}{2}$ of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 26.

W $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 35.

The N $\frac{1}{2}$ of the NE $\frac{1}{4}$ and the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the N $\frac{1}{2}$ of the NW $\frac{1}{4}$ of Section 27, all in Township 39 South, Range 14 West, W.M., in Curry County, Oregon, at the agreed price of seventy-five thousand seven hundred eighty dollars thirty-one cents (\$75,780.31).

Said purchase price is to be paid as follows:

Fifteen thousand one hundred fifty-six dollars six cents (\$15,156.06) cash on signing of this agree-

Defendant's Exhibit Q—(Continued)

ment, receipt whereof is hereby acknowledged by the Seller, and the balance of sixty thousand six hundred twenty-four dollars twenty-five cents (\$60,624.25), payable in ten annual installments of six thousand sixty-two dollars forty-three cents (\$6,062.43), each together with interest from date hereof at the rate of 6% per annum, the first installment with interest payable on the 1st day of September, 1944, and a like installment with interest on the first day of September of each of the next nine succeeding years.

The Seller hereby agrees to convey said property to the Purchaser by a good and sufficient deed upon the payment of the said principle sum and interest in full, and upon the full compliance of the terms of this contract.

It is agreed that upon the execution and delivery of said deed to the Purchaser said Purchaser will pay to the Seller in addition to the above payments the sum of dollars sufficient for the recording of such deed.

It is agreed that the Purchaser shall have the right to possession and to the income from said premises so long as he shall not be in default in the performance of his part of this agreement, but shall forfeit his rights under this agreement and to all payments made pursuant thereto if he shall fail to pay said purchase price or any part thereof, principal or interest, at the time and in the manner herein specified, or shall fail to pay when due and payable the taxes hereafter levied against said

Defendant's Exhibit Q—(Continued)

premises; or shall commit or suffer any strip or waste on such premises, or cut or remove any timber or trees therefrom or buildings or improvements therefrom, or shall violate any other provisions of this Agreement.

The Seller hereby reserves easements over and through any and all of said property for the building of County roads, and,

That said reservation shall be one of the conditions of the Deed hereinafter to be executed by the Seller to the Purchaser as provided herein.

It is further understood by both parties, the Seller and the Purchaser, to this transfer that the above-described real property is to be placed upon the assessment roll by the assessor or sheriff for the year 1944.

In Witness Whereof, the Seller, pursuant to the resolution and Order of the County Court of Curry County duly and regularly adopted, and the authority vested therein by the Laws of the State of Oregon, has caused these presents to be signed and executed by its County Judge and County Commissioners, and attested by its County Clerk, and its name and seal to be hereunto affixed and the Purchaser has hereunto set his hand and seal this 1st day of September, 1943.

CURRY COUNTY, OREGON,
Seller.

/s/ A. H. BOICE,
County Judge.

Defendant's Exhibit Q—(Continued)

/s/ C. M. CLAYTON,
County Commissioner.

/s/ A. W. COPE,
County Commissioner.

/s/ S. A. AGNEW,
Purchaser.

Attest:

/s/ OLETA A. WALKER,
County Clerk.

State of Oregon,
County of Curry—ss.

Be It Remembered, That on this 15th day of October, A.D. 1943, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within-named S. A. Agnew who is known to me to be the identical individual described in and who executed the within instrument and acknowledged to me that he executed the same freely and voluntarily.

In Testimony Whereof, I have hereunto set my hand and official seal the day and year last above written.

[Seal] /s/ HUBERT R. DEWART,
Notary Public.

State of Oregon,
County of Curry—ss.

Be It Remembered, that on this 1st day of September, A.D. 1943, before me, the undersigned, a

Defendant's Exhibit Q—(Continued)

Notary Public in and for said County and State, personally appeared the within-named A. H. Boice, County Judge, who acknowledged to me that he is the County Judge of Curry County, Oregon, and A. W. Cope and C. M. Clayton, who acknowledged to me that they are the County Commissioners of Curry County, Oregon, who are known to me to be the identical individuals described in and who executed the within instrument and acknowledged to me that they executed the same freely and voluntarily and in the capacities therein set forth.

In Testimony Whereof I have hereunto set my hand and official seal the day and year last above written.

[Seal] /s/ HUBERT R. DEWART,
Notary Public for Oregon.

My Commission expires November 5, 1945.

[In Margin]: 9/1/44.

\$60,654.25

30.00

6,062.43

\$54,561.82

Bal. due on down pymt. & int., \$3,639.25.

[Longhand Margin]: Mr. Dewail has in contract \$150.00 more than was figured at sale. Letter of Nov. 15 explaining.

Defendant's Exhibit Q—(Continued)

State of Oregon,
County of Curry—ss.

I, Oleta A. Walker, County Clerk and ex officio Clerk of the Circuit Court of the County and State aforesaid, do hereby certify that the foregoing copy of Contract to Purchase Tax Title Property, Curry County, to S. A. Agnew, has been by me compared with the original, and that it is a correct transcript therefrom, and of the whole of such original Contract as the same appears in the Files at my office and in my custody.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 14th day of October, 1955.

[Seal] /s/ OLETA A. WALKER,
Clerk.

Received in evidence October 25, 1955.

DEFENDANT'S EXHIBIT W

Earnest Money Receipt
Crescent City, California

November 23, 1945.

Received of Sam J. Wilson, hereinafter mentioned as the purchaser, the sum of Five Thousand (\$5,000.00) Dollars as earnest money and in part payment for the purchase of the following-described

Defendant's Exhibit W—(Continued)

real estate situated in the County of Curry, State of Oregon, and more particularly described as follows, to wit: All that property described in a certain Bargain and Sale Deed to be executed by seller upon completion of final payment, copy of which is attached hereto and made a part of this agreement.

Which we have this day sold to the said purchaser for the sum of One Hundred Thousand (\$100,000.00) Dollars, on the following terms, to wit: The sum of Five Thousand (\$5,000.00) Dollars, as herein receipted for and Ninety-five Thousand (\$95,000.00) Dollars upon delivery of Bargain and Sale Deed.

The property is to be conveyed free and clear of all taxes, encumbrances or mortgage liens to date, taxes due and payable for the current fiscal year, to be prorated as of December 31st, 1945. The seller shall provide a Title Insurance policy issued by the Curry County Abstract Company of Gold Beach, Oregon, through the Commonwealth, Inc., of Portland, Oregon, showing the title to the property in said deed described to be merchantable and free from liens or encumbrances except last half of current taxes.

The purchaser shall pay for the evidence of title and continuation thereof when deed is delivered.

Should title to any particular parcel or parcels of said property be defective or unmerchantable, then the Escrow Holder shall withhold a sum equal

Defendant's Exhibit W—(Continued)

to \$25.00 per acre for the cost of perfection of title to said parcel or parcels, and in the event title cannot be perfected, a deduction from the total selling price shall be made at the above rate, and seller shall retain ownership of said parcel or parcels and purchaser agrees to execute quitclaim deed to said parcel or parcels.

In the event the said Title Company, in preparation of data in connection with the Title Insurance policy, find that the title to Twenty-five per cent (25%) or more of the parcels conveyed by the deed held in escrow is defective, or unmerchantable, then the Escrow Holder shall not pay the delinquent taxes and the purchaser shall be entitled to and shall receive a refund of monies paid into escrow, if the seller is unable to perfect the title within six (6) months from the time of title report unless the purchaser elects to accept the title in said condition.

Possession of said premises is to be delivered to the purchaser by delivery of deed. Time is the essence of this contract.

Further conditions are as follows: The seller further agrees with the purchaser to execute an assignment of that certain easement reserved for logging purposes over a 100-foot strip of land known as the North Fork spur and more particularly described in that certain deed issued by Brookings Land and Townsite Co., to Doyle Garvin and

Defendant's Exhibit W—(Continued)

Amanda Garvin, the use and conditions of said easement are to be the same as referred to in said deed recorded in Curry County Deed records, Vol. 27, page 313, which easement reads as follows: Subject, however, to a roadway easement one hundred (100) feet wide across said premises to be selected by the grantor which the grantor agrees to improve at its own expense for its own use, but agrees with the grantee herewith that such use shall be enjoyed equally by the grantee and their assigns together with Brookings Land and Townsite Company, the Delour Corporation and/or its assigns to be used on the same terms and conditions as set forth in that deed between the Brookings Land and Townsite Company and Doyle Isaac Garvin and Amanda E. Garvin recorded January 19th, 1940, Book 25 of Deed, Page 477, Records of Curry County, Oregon, which reads: Subject, however, reserving unto the Grantor, and/or its assigns a perpetual right and easement to construct and maintain a locked gateway road and to travel over and upon the same through said lands herein conveyed, but such use and travel shall not be exclusive and shall be used, exercised and enjoyed in common with the use and enjoyment thereof by the grantee herein, their successors and assigns. It is further and mutually agreed between the grantor and grantees herein named, the Delour Corporation or its assigns are to have a perpetual right and easement over said land for the purpose of trucking logs or any other practical logging method of

Defendant's Exhibit W—(Continued)

removing timber owned by the said corporation on adjacent lands and locked gateway need not apply during actual logging operations.

The said right and easement hereby granted and conveyed shall be appurtenant to those certain lands herein conveyed and other lands owned by the grantor in sections 34, 35 and 26, Township 40 South, Range 13 West, Willamette Meridian, Curry County, Oregon. It is understood and agreed between the grantor and grantee said right and easement shall be 100 feet in width, extending 50 feet on each side of the center line of the old California and Oregon, North Fork Chetco River Railroad right of way.

It is further agreed said right and easement strip as constructed shall be used by the grantor and grantees as a fence boundary, but no fence, however, shall be constructed to block the present roadway as now constructed, and the said easement shall run with the said lands and shall inure to the use and benefit of the successors in interest of the grantor and grantees herein, in the ownership of the said lands.

Purchaser is to pay the balance of the purchase price upon notice from the said Title Company of its readiness to issue its policy of title insurance in the sum of One Hundred Thousand (\$100,000.00) Dollars to purchaser. However, when the tax statements are received from the Tax Collector of Curry

Defendant's Exhibit W—(Continued)

County, Oregon, by the Escrow Holder, the purchaser agrees, upon demand, to furnish the said Escrow Holder sufficient funds to pay the delinquent taxes and his proportionate share of the current taxes to December 31st, 1945.

The Bank of America N. T. & S. A. of Crescent City, California, is to handle escrow papers and funds in connection with this transaction and deliver all papers at conclusion of sale.

/s/ SAM J. WILSON,
Agent.

I hereby agree to purchase.

/s/ S. A. AGNEW,
Purchaser.

I hereby agree to sell.

/s/ SAMUEL BANKUS,
Seller.

Received in evidence October 25, 1955.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
District of Oregon—ss.

I, R. DeMott, Clerk of the United States District Court for the District of Oregon, do hereby certify

that the foregoing documents consisting of Complaint; Answer; Pretrial Order; Memorandum of Decision; Findings of Fact and Conclusions of Law; Judgment; Notice of Appeal; Order Extending Time to Docket Appeal; Designation of Contents of Record on Appeal, and Transcript of Docket Entries, constitute the record on appeal from a judgment of said court in a cause therein numbered Civil 8011, in which the United States of America is the appellant and The United States National Bank of Portland (Oregon), Executor of the Estate of Sam J. Wilson, deceased, and Jessie Wilson are the appellees; that the said record has been prepared by me in accordance with the designation of contents of record on appeal filed by the appellant, and in accordance with the rules of this court.

I further certify that there is enclosed herewith transcript of proceedings of October 25, 1955. The exhibits are being forwarded by the attorneys for the appellant.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this first day of May, 1956.

[Seal]

R. DeMOTT,
Clerk;

By /s/ F. L. BUCK,
Chief Deputy.

[Endorsed]: No. 15120. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. The United States National Bank of Portland (Oregon), Executor of the Estate of Sam J. Wilson, Deceased, and Jessie Wilson, Appellees. Transcript of Record. Appeal from the United States District Court for the District of Oregon.

Filed May 3, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

Civil Action No. 15120

THE UNITED STATES OF AMERICA,

Appellant,

vs.

THE UNITED STATES NATIONAL BANK OF
PORTLAND (OREGON), Executor of the
Estate of SAM J. WILSON, Deceased, and
JESSIE WILSON,

Appellees.

STATEMENT OF POINTS ON WHICH
APPELLANT INTENDS TO RELY

The above-named appellant, The United States of America, intends to rely on the following points on its appeal to the United States Court of Appeals for the Ninth Circuit:

1. The Findings of Fact made by the trial court in the above-entitled cause are erroneous in the following particulars:

(a) The trial court erred in finding (Findings of Fact, Par. III) that during the early part of the year 1943, Samuel J. Wilson entered into an oral agreement of joint venture with Samuel A. Agnew.

(b) The trial court erred in finding (Findings of Fact, Par. IV) that commencing in January, 1943, and continuing until June, 1946, Wilson, pur-

suant to the terms of said agreement of joint venture, performed the agreed personal services for the joint venture.

(c) The trial court erred in finding (Findings of Fact, Par. X) that the agreement between Agnew and Wilson of November 14, 1949, effected the dissolution of the joint venture theretofore existing between them and the conveyance of the timberlands to Wilson did not constitute a distribution of profits or anticipated profits of the joint venture.

(d) The trial court erred in deciding and finding (Conclusions of Law, Par. I) that the agreement between Agnew and Wilson of November 14, 1949, constituted the non-taxable dissolution of a joint venture and the fair market value of the proceeds thereof did not constitute compensation for Wilson's personal services and the conveyance of the timberlands to Wilson was a part of the division in kind between Agnew and Wilson of the assets of the joint venture.

(e) The trial court erred in finding (Conclusions of Law, Par. II) that the fair market value of the timberlands conveyed to Wilson in the year 1949 did not give rise to the receipt by him in that year of taxable income, except to the extent of the cash received by him.

(f) The trial court erred in failing to find and decide that the fair market value of the property and the cash received by Wilson in 1949 as a result

of the settlement of litigation then pending between Wilson and Agnew represented compensation for services rendered over a period of less than 36 months so as to render Section 107 of the Internal Revenue Code of 1939 inapplicable.

(g) In the alternative, the trial court erred in failing to find and decide that the fair market value of the property and the cash received by Wilson in 1949 as a result of the settlement of litigation then pending between Wilson and Agnew represented lost or anticipated profits taxable under Section 22(a) of the Internal Revenue Code of 1939.

(h) The trial court erred in entering judgment for appellee.

/s/ CHARLES K. RICE,
Assistant Attorney General;

By LEE A. JACKSON,
Acting Chief, Appellate
Section.

[Endorsed]: Filed May 2, 1956.